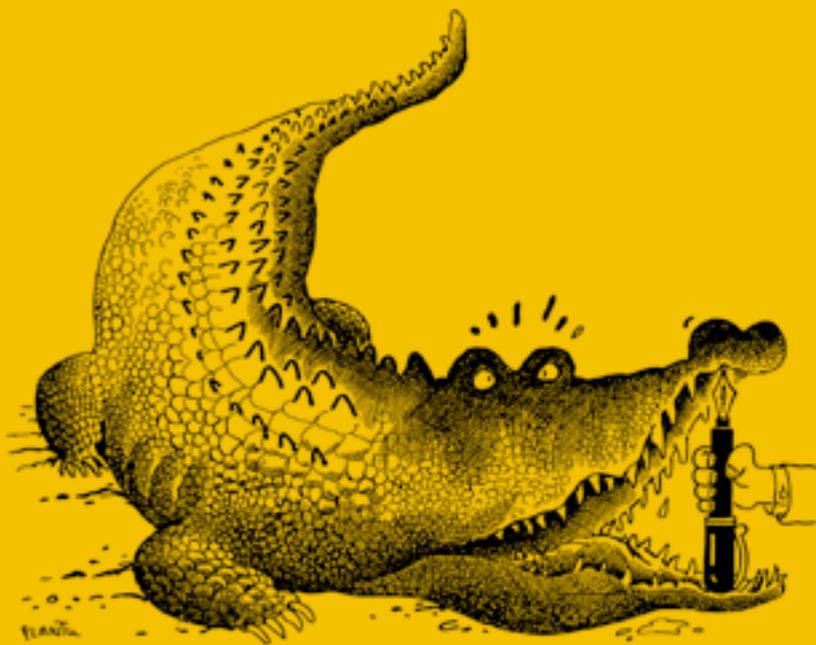


■ Ten Years for Media Freedom An OSCE Anniversary

Current and Forthcoming Challenges



THE REPRESENTATIVE ON FREEDOM OF THE MEDIA



Organization for Security and
Co-operation in Europe

The Representative on
Freedom of the Media

- Ten Years for Media Freedom
An OSCE Anniversary

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Vienna 2008

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Foreword

Miklós Haraszti

This year the Office of the Representative on Freedom of the Media (RFOM), the only intergovernmental media freedom watchdog in the world, completes its tenth year of operation. We have received numerous congratulatory greetings, but I feel that it is the OSCE participating States who should be congratulated for establishing and maintaining this unique institution.

A unique institution

For ten years now, the Representative has scrutinized challenges to press freedoms in all geographical areas of the OSCE region. The Office has intervened in countless cases where reporters were harassed or even murdered; where pluralism was restricted by governmental or private ownership concentration; where the media were denied the right to investigate their governments; or where offending or critical views were criminalized as extremism, defamation, or hate speech.¹

The RFOM is mandated not only to publicly intervene in cases of media freedom violations; that job is also done by many wonderful national and international civil organizations, all our allies. In addition, we can request governments to act upon our recommendations, counsel them on legal reform and support civil society.

Ten years ago, the establishment of this Office put the last touches on a revolutionary process, in which all participating States committed themselves

¹ For our press releases and our yearbooks, please visit our website at <<http://www.osce.org/fom>>.

to the universal values of democracy. Free and fair elections, a free civil society and free speech were acknowledged as being vital not only for peace inside any nation but also for international security. A free press and media pluralism were recognized as values to be held dear not only domestically but in co-operation among the OSCE nations.

These commitments were institutionalized with the creation of three autonomous watchdog bodies: the Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner on National Minorities (HCNM) and the Representative on Freedom of the Media (RFOM).

Meltdown of commitments?

Despite the numerous congratulations that the Office received on its anniversary, I believe we should beware of complacency. After a decade of operation, we are encountering an emerging trend that I find more worrying than all our everyday challenges: the questioning of the universality of the OSCE's commitments.

It signals what I would like to call a certain meltdown of these commitments, when today, just as in the days before the formation of the OSCE, the international community's concern for human rights is sometimes labelled as intrusion into internal affairs and even termed "cold-warish". Time and again, OSCE institutions, mandated by participating States to take care that they fulfil their commitments, are finding their requests for co-operation rejected by governments and by the media they own.

Most ominous is the re-emergence of the practice of distinguishing different sorts of democracy. Not quite like during the Cold War, when so-called real or people's democracies were pitched against fake or bourgeois democracies. Now the talk is merely of one's own or managed democracies, as opposed to other versions, labelled alien or chaotic. But, as with the

old distancing, the intention is to justify saying goodbye to international scrutiny of compliance with free elections, free expression, or free co-operation among members of civil society across border lines, values once acknowledged as desirable and indivisible.

This relativist meltdown, also with regards to speech rights, should be halted and reversed. The next ten years will be marked by new types of challenges to freedom of the media, both east and west of Vienna. Technology will be a crucial factor, but in most cases, whether in the older democracies or in the post-1989 ones, the nature of power will be the root of the problem.

We can tackle these challenges through co-operation and dialogue. Governments, members of civil society and journalists in the OSCE participating States can count on the dedication of this Office in advocating for compliance with our shared media freedom commitments.

The anniversary event and this publication

To commemorate the tenth anniversary of the RFOM, our Office hosted an expert panel discussion at the Vienna Hofburg on 29 February 2008. The event was initiated by the Finnish Chairman-in-Office, demonstrating the importance the Chairmanship ascribes to the OSCE's press freedom commitments.

The Secretary of State of the Finnish Ministry of Foreign Affairs, **Pertti Torstila**, OSCE Secretary General **Marc Perrin de Brichambaut** and the Director of ODIHR, **Christian Strohal**, addressed the gathering. **Freimut Duve**, the first Representative from 1998 to 2004, greeted the meeting over the phone.

The panel comprised an impressive array of speakers. Instead of dwelling on the past, they addressed present and future challenges to media freedom

and free expression. This forward-looking focus, I felt, was a felicitous one for the commemoration of our first decade of work. The speakers' presentations have been reproduced in this book.

Le Monde cartoonist **Plantu** and *Gazeta Wyborcza*'s leading correspondent **Konstanty Gebert** gave special attention to international tensions that have arisen since 2006 over secular depictions of religion and the recent wave of criminalization of certain interpretations of history.

On behalf of his organization, **Thomas Hammarberg**, Human Rights Commissioner of the Council of Europe joined my Office's appeal to decriminalize the professional mistakes of journalists – such as defamation and insult – and to allow these offences to be treated exclusively in civil courts.

Reino Paasilinna, Finnish Member of European Parliament, and **Gus Hosein**, Senior Fellow at Privacy International, explored the growing trend of Internet and communications surveillance both in the United States and the European Union, which is already having detrimental implications on journalists' rights.

Firdevs Robinson, editor at the *BBC World Service*, described the current media and press freedom situation in Turkey and the three South Caucasus countries, Armenia, Azerbaijan and Georgia.

Alexei Simonov, President of the Moscow-based Glasnost Defence Foundation, analysed the dangers to journalists and the atrophy of free reporting in the Russian Federation's media, while **Oleg Panfilov**, Director of the Centre for Journalism in Extreme Situations, depicted a distressing picture of press freedoms in other countries of the Commonwealth of Independent States (CIS).

The Chair of the Writers in Prison Committee at PEN International, **Karin Clark**, spoke about free expression restrictions faced by writers OSCE-wide.

In addition to these pieces, you will also find contributions in this volume from members of our Office on subjects they are working on: **Slava Shayman** reports on the legal review aspect of our work; **Christian Möller** writes about guaranteeing media freedom on the Internet and **Arnaud Amouroux** places the 2006 cartoons controversy into a broader context.

In a separate section, we have reproduced a selection of cartoons on the theme of freedom of the media by the cartoonists Plantu and **Chappatte**.

Finally, this publication includes a number of congratulatory statements made on the occasion of the RFOM's tenth anniversary.

I would like to express my appreciation to the governments of **Finland**, **Germany**, and **the Netherlands**, who helped make both the anniversary event and the book you now hold in your hands possible.

I wish you enjoyable reading.

Anniversary Essays

A brief look back and the uneasy years to come

Freimut Duve

How it all began

Let us look back. From the mid-1990s, I was Chairperson of the Human Rights Commission at the OSCE Parliamentary Assembly. From the discussions in the Commission it soon became clear to me that the development of free and independent journalism, although vital for democratic rebirth after decades of communist rule, was of no importance to international institutions. This motivated me to establish the OSCE Prize for Democracy and Journalism and to ask some of the major media companies to provide funding for it. In a ceremony at the Swedish Parliament, we presented this prize to the Polish journalist, Adam Michnik, in recognition of his journalistic struggle for freedom, his commitment during the Solidarnosc era.

It was at this time that I first had the idea of proposing to the participating States of the OSCE the establishment of an office to observe and to protect the professional freedom and responsibility of journalism.

The twenty-first century holds great promise for freedom of the media in general and journalistic media in particular. At the same time, the demands placed on journalists' professionalism have increased enormously.

The year 2008, and most probably the years that follow, will not be easy ones for those upholding the cause of the freedom of the media and the freedom and dignity of journalists in the OSCE region. Too many journalists, even today, are being asked or even forced to follow the exact orders of those who directly or indirectly command the media they are working for.

Without an independent professional media and an independent professional law system to act as a balance for the constitutional basis of each of the participating States, there can be no future for democracy and security in the OSCE region.

It was a proud moment for all the participating States of the OSCE when, ten years ago, they accepted the establishment of the Representative for Freedom of the Media (RFOM) – the first and only institution of its kind in the world.

Looking back

At the start of the twenty-first century, the citizens of Europe are experiencing a profound change in all areas of the media. In television, the necessary balance between the concern for quality and the consumer-oriented concern for high viewing figures is becoming more and more lopsided. Financially, newspapers and journals are increasingly in the red. And the clear distinction between private and public appears to be slipping ever more into oblivion.

Let us take a look back at the difficult media history of the last century. For it was not only the current media situation that moved me to propose the establishment of an OSCE office for media freedom. I also had very personal, historical reasons for making this proposal.

In my country, Germany, the new media – especially radio, but also the mass press – were being used to instrumentalize racial hatred as early as the 1920s, even before 1933. Of course, there had already been anti-Semitism in the nineteenth century, but without the propaganda tools of the media. With the total control of radio stations as of 1933 and the use of photography for propaganda purposes, it became possible to spread mass hatred in an organized fashion.

Stalin used similar means, especially photography. He, however, began by using it to brand certain individuals whom he wanted to purge from the government as enemies of the people, in order to be able to condemn them to death more “elegantly”. Photographs of these new “enemies” were published as early as the 1920s. There has been too little analysis as yet of how the new technical media, while providing great opportunities for the development of democratic culture, at the same time increased the risk of the promotion of totalitarianism. Although democratic traditions and hate issues are both age-old, this was a new, double-edged sword.

Awareness of this may have contributed to the fact that in Germany, responsible journalism concerning such subjects began to be practised even back in the 1950s. Also, German legislation made racial hatred and anti-Semitism in all media a punishable offence. This happened much to the astonishment of our American friends, who allowed the publication of hate-filled anti-Semitic pictures and texts, and did nothing to prevent their distribution worldwide and to Germany in particular.

The end of the Soviet Union again raised the question: is it the responsibility of journalists to actively fight the publication of material, often anti-Semitic, expressing racial hatred, and above all not to allow it in their own publications? When my mandate as RFOM was drawn up, this question was answered with a “yes”. As a consequence, all of the RFOM yearbooks have carried the title *Freedom and Responsibility*. Criticism has been voiced about the use of the term “responsibility” in connection with free journalism, for example in the United States Congress. I was invited to a meeting of the Subcommittee on Human Rights in Washington, at which it was drawn to my attention that the term “responsibility” is categorically rejected in American discussions on media freedom because of the First Amendment to the *United States Constitution*. As a German citizen, I emphatically referred to the fact that, since the establishment of the Federal Republic, my country

has a tradition of fostering special vigilance regarding racist and anti-Semitic media.

The necessary awareness today

There are exceptions to absolute freedom of opinion for journalism: this is a point I have stressed time and again. Anti-Semitic hate campaigns are currently on the rise in leading newspapers – in the Baltic States, for example, and now even in Hungary. So many years after the turn, demonizing of the “other” is once again becoming discernable in some of the post-communist media.

This is an extraordinarily important issue for the media in an expanded Europe. The success of the European Union after the Second World War has indeed been a linguistic success, and even a literary one. In the new Europe, “Goebblesque” enemy propaganda portraying France as the arch enemy had to be radically pushed aside, once and for all. This success was the prerequisite for the subsequent European successes. There are no more culturally homogeneous societies, and this also applies to the States that have recently joined the European Union. A responsible approach to ethnic conflicts by journalists in these new Member States is crucial for the future success of greater Europe.

It will be the task – possibly of a European press council – to watch out for critical developments. Yet at the same time, fundamental editorial independence must be preserved. The Office of the RFOM has always emphasized these two separate and sometimes conflicting aims.

Terror and the media

One of the results of the mass murder of more than 3,000 citizens in New York on 11 September 2001 was a new challenge presented to journalistic

freedom. The understandable reactions of the United States and their allies to this crime enormously increased the demands placed on journalistic work.

A new journalistic issue, already evident in the Balkan wars in the early 1990s, again clearly emerged at this time. The forms of warfare that led to the creation of the Red Cross and determined important stages in the development of the codification of human rights are disappearing. Around the world, various forms of terror, some new and some age-old, are replacing traditional wars. This is also changing how journalists perceive and represent these new global forms of violence.

Terrorism started to become part of the new reality of war in the early 1990s in the Balkans. The wars in Croatia and Bosnia and Herzegovina would not have been imaginable without the ethnic and racist radio and television broadcasts, for example on the Serbian state radio station. The fact that it was possible in just a few weeks to incite citizens to murder their neighbours with different religions is linked to these new forms of terror, used by a media steered by hatred.

I witnessed this myself on my difficult trips into the war regions, when my interpreter translated the Serbian station's broadcast on the car radio. Of course, there were thousands who were not taken in by this propaganda, but the number of civilians who were murdered and tortured by armed civilians goes into the tens of thousands. If the media had not been used as an instrument of terror, these crimes would not have been committed. They reflected the new world situation with regard to the violence of war. State wars in which soldiers have certain rights and duties no longer exist. There are no more traditional declarations of war and no basic rights for prisoners of war. The end of the tradition of the "classical" war, which stretched back over centuries, was, of course, ushered in during the First and Second World Wars. Hitler started the Second World War with an optical ruse. German

soldiers in Polish uniforms staged an “enemy” attack: this was propaganda directed at the media.

Shortly after 11 September, I issued a warning in the name of our OSCE Office against false reactions to terrorist mass murder. My concern was that States in the process of transformation to democracy would now be observing Washington’s every move and would exploit every stricter stance towards journalists for their own new anti-terror policies. Russia rapidly transformed the Chechen War into an anti-terror war, with the result that journalists who wrote critically about the actions of Russian soldiers could be accused of being pro-terrorist. The Central Asian States also rapidly jumped onto the bandwagon of this new argument.

As a result, in my first quarterly report after 11 September, I issued the following warning: “The consequences of 11 September do have an effect on the work of my Office. A lot of people shared my fear that freedom of expression will somewhat fade into the background with the enormous challenges stemming from the common fight against criminal terrorist acts. I do not want to sound alarmist but I hope we are not too late for this discussion.”

The new, dramatic challenge of media ownership

Italy and Russia, two OSCE participating States with extremely different historic backgrounds and extremely different global roles, have seen a similar development with respect to media freedom: in both countries a major part of the media is in the hands of companies that are directly or indirectly controlled by presidents or prime ministers. The majority of the Russian media are in possession of Gazprom, a state-owned company. Berlusconi, the newly elected Prime Minister of Italy, owns the largest group of Italian print and broadcasting media.

For the sake of the future of free and responsible media serving democratic development in the twenty-first century, this cannot be accepted. I very much hope that this is not only my personal conviction.

The good old media freedom threats

Kostek Gebert

I see three big dangers currently threatening freedom of the media: government pressure on the media, corruption in journalism and censorship. Eighteen years ago, I was pretty sure the three would eventually disappear. They're still here. In the wonderful age of democracy, the three monsters are still alive. I was naive. They're still kicking in today's world.

One has to remember that during the fight against communist and all other forms of oppression, the struggle was not only for freedom of expression, but freedom of expression was the struggle. Without the underground press, we could not have succeeded.

Governments seem to have studied what happened during the 1980s and committed themselves to not allowing it to happen again.

Unfortunately, media repression in Russia is under the spotlight these days. However, I would like to remind everyone that Russia started the movement for freedom. The Russians were our teachers; we should not fall into clichés about national specificities. "Russia not fit for freedom of the media": this is obscene. In Russia, there has been a never-ending struggle for freedom since the 1960s.

It's not about countries or national specificities; we're all in the same mess together. Coming from Poland, I'm hardly in a position to criticize others for their evils.

Government pressure on the media

Back at home in Poland, we saw a former Prime Minister refusing to talk to media (including my newspaper) because they were owned by “foreign interests”. This same former Prime Minister granted exclusive media rights to a fundamentalist Catholic television station to cover governmental events, hoping for some electoral benefits. Mercifully, in our last election, we dumped him. Only one of the twins remains.¹

On at least two occasions, this former Prime Minister used the prosecutor’s office to combat media freedom, initiating:

- a lawsuit against a German newspaper for disparaging comments about him, his brother and his mother;
- an investigation against a Spanish newspaper for a column alleging that anti-Semitism is alive and well in Poland today.

Using the prosecutor’s office for combating freedom of expression: this was something new! This phenomenon, which would have been considered absurd before, has now become commonplace.

The battle for freedom of expression is never-ending. It has to be fought every day. But in order for the media to be able to lead the struggle, they must be trustworthy.

Corruption

During the communist era, most of the media were lying all of the time. The problem is that this did not stop after the end of communism. Deeply corrupted journalists: we thought this was a phenomenon specific to the times of communism. We were wrong: it is continuing.

¹ Lech Kaczynski, twin brother of former Prime Minister Jaroslav Kaczynski, is President of Poland.

Let us turn briefly to the Russian scene today. The growing authoritarianism of Putin's regime is a major threat to media freedom. But it is not the only one, and possibly not the most important one.

In the last 15 years, we have witnessed a practice known in colloquial Russian as "*zakazukha*" ("paying for articles"). In Russia, it is common practice to commission articles praising or condemning political activists, commercial competitors, or people whom one happens to dislike.

This practice accounts for an important part of the revenues of Russian and Ukrainian newspapers.

"*Zakazukha*" is not only morally wrong and legally challengeable – assuming that one has a legal system that will handle the challenge. It is also a fundamental threat to media freedom, as it ultimately destroys the relationship of trust between journalists and their readers.

If a journalist gets into trouble with the authorities for writing what he or she believes, the natural reaction of readers will be to go out into the streets and support that journalist, because it is a fundamental interest of their own, the freedom of expression, that has been violated.

But why should a reader bother going out into the streets to defend a journalist who gets into trouble for writing a paid article? All that is at stake here is the journalist's personal financial interest, no longer the shared interest in a democratic value. The profound silence or indifference with which the Russian public has reacted to numerous threats to media freedom is a direct consequence of this deplorable practice.

"No more Politkovskayas to be killed, it's over," one Russian journalist said.

We journalists must be ready to stand up for the values that we proclaim, not only in the glorious way of standing up against the regime, but also in the very practical way of refusing to be paid for what the powers that be want us to write. Unless we do that, media freedom is as good as gone.

This deplorable practice, especially visible in the Commonwealth of Independent States (CIS) countries, exists in European countries, too, albeit in more sophisticated forms. Huge amounts of money are indirectly paid to promote business concerns. And yes, the other difference is that if this comes to light in the European Union, it is punished.

Journalists who allow themselves to be corrupted in this way not only destroy their own integrity but are also a threat to the whole profession. We journalists are not sufficiently aware of that.

Censorship

Formally, censorship has disappeared. There are no more censorship laws. But censorship is still continuing even after 1989.

We still have an article on the books, in the law on public media, stating that public media must respect the Christian system of values. This article has never been invoked in a law case.

Once we accept this law, it's very difficult to ensure that other religions are not abused. If we protect the religious beliefs of Christians, why not those of Muslims? And if we protect the religious beliefs of Muslims, why not those of others?

In fact, why limit ourselves to religions? Why not have laws forbidding people to say things that others might consider dishonourable. In this context,

the growing body of laws making it a punishable offence to deny historical events represents a great danger, even if their intent is legitimate and just...

Last question: if everything is so good, how come it's so bad?

Holocaust denial laws

Commissioner Hammarberg said he is opposed to the criminalization of debates about history.² I'm grateful for that.

Saying that the Shoah didn't happen is not expressing an opinion in an historical debate. It is denying the very real pain that descendants of the victims suffer. It means I'm a liar when I say my mother is one of five survivors of a family of several hundreds of people. I can suffer being called a liar; but I don't grant anybody the right to increase the pain.

I believe that Holocaust denial laws were passed for a very legitimate reason. The problem is: once you start there, there is no legitimate way of stopping, of knowing where to draw the line. I'm opposed to these laws because their general impact does more damage than good.

There are two things to keep in mind, to understand:

First, these laws were passed in the name of a very legitimate interest.

Second, if we repeal them, if we do not want the State to prosecute, then we as members of civil society have the obligation to express our outrage. If I do not want the State to punish, this imposes on me the obligation to go out into the streets and protest every time somebody makes such a statement.

² See Thomas Hammarberg, "Free press: watchdog not lapdog", below, pp.27 ff.

My real fear is that ultimately, these laws may just be thrown out of the law books. In our societies, even democracies, there is a tendency to delegate to the governments the decision to regulate such statements: in plain words, to give the government the right of censorship. This is the danger of these laws, which otherwise were passed with the best possible intent.

Free press: watchdog not lapdog

Thomas Hammarberg

I am a former journalist who happened to become Human Rights Commissioner of the Council of Europe. For me, human rights activism and journalism are very closely connected.

The media are immensely important for human rights activism. After all, it is the media that give us the facts about alleged human rights abuses. Human rights protectors depend on the media to convey their message to the public. Just negotiating with governments, without the backing of pressure exerted by the media, is not enough.

During my missions, I promote freedom of expression – often in co-ordination with Miklós Haraszti, the OSCE Representative on Freedom of the Media (RFOM). Over and over again, I have to repeat that the purpose of journalism is not to please power-holders or to act as the mouthpiece of governments. I also have to stress the obvious: that the media have the important role of acting as a “public watchdog” and informing the public about relevant developments in society, including developments that may embarrass the powerful and the wealthy.

When we talk about freedom of expression in connection with established international norms here in Europe, we need to look at Article 10 of the *European Convention on Human Rights*. Restrictions on the exercise of this freedom are contained in Paragraph 2 of that Article. For instance, hate speech, incitement to violence and the dissemination of child pornography are not allowed. The *European Convention* clarifies that the State is allowed

to introduce restrictions, for instance, to protect national security and public safety. The biggest problem is how to interpret them.

The scope of such exceptions must be regulated by law and interpreted narrowly. It must be clear that critical reporting is allowed, including about activities of authorities, private companies and individual politicians or businessmen. In this respect, the Court of Human Rights in Strasbourg provided an important clarification when it stated that freedom of expression might include the dissemination of information that “offends, shocks or disturbs.” It must be possible for the media to be controversial.

One of the roles of media and journalists is to act as an instrument for debating issues freely and monitoring those in power. Therefore, they are important for the protection of democracy itself.

The controversy surrounding the so-called Danish cartoons and the roundabout dog in Sweden has led to an intense discussion, including in the United Nations. In this connection, I believe we should recall the words of Voltaire: “I dislike your opinion, but I would defend your right to express your opinion”. We should oppose those who demand that people go to jail for having drawn or published these images. However, this does not mean that we should support these people politically.

I think these cartoons were very unwise and vulgar. In fact, the publishing of the Danish cartoons was irresponsible and a reflection of Islamophobia. The damage was considerable and the hurt among Muslims was very deep. However, I was not in favour of any legal action against *Jyllands-Posten*. Also, I do not feel that the cartoons illustrated a need for stronger blasphemy laws. My opinion is that we should try to tackle such differences through a free and open discussion.

Let me summarize some of my broader concerns regarding violations to freedom of expression that have emerged in the course of my work:

Criminalization of libel and defamation in several parts of Europe

The first problem is that defamation is still criminalized in several parts of Europe. There are laws in place making it a criminal offence to say or publish true or false facts or opinions that offend a person or undermine his or her reputation. Journalists are sent to prison for what they have reported. Even though this almost never happens in Europe, the fact is that countries in other parts of the world refer to the laws of these established democracies in arguing for retaining similar provisions.

Miklós Haraszti has recommended that offences against “honour and dignity” be decriminalized and handled in civil-law courts in the future. I fully agree with that position. The mere existence of criminal defamation laws could intimidate journalists and lead to unfortunate self-censorship.

The Parliamentary Assembly of the Council of Europe recently suggested that prison sentences no longer be given out in cases of defamation. Furthermore, it made the important point that defamation laws should not give better protection to public figures than to ordinary citizens.

I think that we should protest not only against actual cases or charges brought against persons in some countries but also against the existence of legislation criminalizing libel in many Western European countries. These countries would be setting a good example if they removed such provisions from their books.

Misuse of counter-terrorism provisions

How have methods of counter-terrorism been used against journalists since 9/11? It is time to review what has been done during these past six and a

half years, especially as the current atmosphere seems to allow for such discussion and review. Once again, the well-established democracies of Western Europe are among the main addressees of this message, but not the only ones.

The International Federation of Journalists (IFJ) has written about the activities of security agencies against individual journalists: reporters and newsrooms have been spied upon, security services have used paid informers inside the media and media telephones have been routinely tapped. All in the name of combating terrorism. The use of such surveillance methods is clearly a serious infringement on freedom of expression, and therefore constitutes a threat to full democracy.

Criminalization of discussions about historical events

I think there is also a need to reconsider the criminalization of statements about historical events. Incitement to violence or hatred against a certain minority is unacceptable. But it is not reasonable that people go to jail just because they have stupid or ill-informed ideas about what happened in the past. Even such opinions should be allowed. We should instead take up the debate, and show them that they are wrong. We should argue with these people, but not send them to prison.

State monopoly of television and radio

In some countries, the distribution of wave lengths and frequencies to private companies is used as a way of favouring channels that are close to the government's views.

Some governments also use their economic means to place advertisements in pro-governmental newspapers (leaving newspapers critical of the government without these resources). It also happens that they put pressure

on the business community not to put ads in the critical media. This is a more indirect way of reaching the same goal.

Decent level of neutrality and objectivity

Threats to the freedom and independence of the media come not only from governments, however. In some countries, the owners of newspaper, radio and television corporations act with no consideration to ethical standards.

It is important to “depoliticize” the governmental channels, so that these do not have to reproduce the government’s views only. Objective public service must be the real aim, rather than serving as a propaganda organ for the government.

Commercialism and lack of transparency in media ownership

In quite a number of countries, wealthy people who are also politically active are buying or setting up media outlets to serve their own personal interests, without even clarifying whom they are backing.

These are extreme cases of the general problem of how to regulate the relationship between journalists and media owners so as to ensure that journalism is free and independent. One absolute minimum requirement, of course, is that the media be transparent about their ownership.

Corruption of journalists

Journalists with, in some cases, very low incomes may succumb to writing commissioned reports along a prescribed political line. Media enterprises are bought or set up to serve particular political or business interests.

Also, I have received reports of clearly ruthless methods used by some such media companies, including extortion or blackmail. Officials have been threatened with being targeted in fake scandal reporting if they did not take certain decisions.

Media self-regulation and ethical journalism

Journalists need to re-think the impact of those who misuse their status and undermine the credibility of the whole profession. Lack of ethics in journalism is a problem in all countries. It undermines not only the credibility of journalists, but also democracy itself.

Self-regulatory mechanisms have brought encouraging results in countries where media representatives have developed codes of ethics and designed their own special procedures to enforce professional standards, for instance, through press councils or press ombudspersons. As a result, media outlets have matured, protection of the public against abuse has improved and the right of reply has been enhanced.

Unfortunately, this does not function everywhere. Not all journalists agree to sign up (and this is a shame). There should be more pressure among journalists to discuss and agree upon common standards.

For the sake of democracy and human rights, we need free, independent and high-quality journalism. A rights-based governmental media policy would go a long way toward providing the framework for such a media landscape.

I also believe, however, that journalists themselves must be key defenders of these values.

I have noted with great interest the IFJ's *Ethical Journalism Initiative*, aimed at helping journalists and media rebuild confidence in quality journalism.

I understand that the *Initiative* seeks to promote a debate on the meaning of self-regulation (in contrast to self-censorship); to promote ways of finding relevant information as a protection against manipulation; to promote principles of ethical journalism in sensitive areas such as migration and terrorism; to promote the recruitment of minority representatives to the news rooms; and to promote contacts with other civil society groups to discuss these problems – without, of course, compromising editorial independence.

Building bridges with our pens

Plantu

The idea for the project *Cartooning for Peace* was born in 1991, when I met former Palestinian leader Yasser Arafat. He drew the Star of David for one of my drawings and signed it. At that time, Yasser Arafat could not say, “I recognize the State of Israel,” and yet, with a blue felt-tipped pen he drew the Star of David on the Israeli flag. Arafat could do things with his pen that he couldn’t do with his mind. Because drawing makes people feel like children. The language of drawing and pictures is our first language.

The following year, I travelled to Israel and convinced Shimon Peres, then Israeli Minister of Foreign Affairs, to sign the same drawing. It was the first time – this was prior to the 1993 Oslo Accords – that signatures from both the Israeli Government and the Palestine Liberation Organization had been affixed to the same document. Since that time, I have thought a great deal about the role of newspaper cartoonists.

Cartooning for Peace

I once again realized the power cartoons hold when the world erupted in anger over the publication of caricatures of the Prophet Mohammed in 2006. To provide a forum for such debate, we launched *Cartooning for Peace* that same year at the United Nations Headquarters in New York, with a seminar co-sponsored by the Halle Institute featuring an exhibition of cartoons. The various panels addressed the questions, “Should the cartoonist educate?” and “Should responsibilities abridge rights?”

Cartooning for Peace has been running ever since, with the help of former United Nations Secretary-General Kofi Annan. Every year, we hold a large conference in a different city (Atlanta, United States, in November 2007, Wellington, New Zealand, in November 2008).

Our job is to build bridges with our pens. All cartoonists have a very important role, and this role is to open barriers. In *Cartooning for Peace*, contributors come from all over the world, from Western Europe and the Arab Muslim world.

The artists gather to discuss the future of political cartooning and their growing concern about the pressure and threats they have to face. They all have strong beliefs and they all fight for them. They sometimes have widely varying political views and convictions, and this actually increases our international credibility.

These cartoonists want to continue drawing disturbing and unnerving cartoons without hate. This is the outstanding feature of *Cartooning for Peace*: we want to avoid unnecessary blasphemy against Mohammed or the Jews.

When depicting cultural and religious symbols, a cartoon artist must act with the necessary ethical responsibility. I think that the political cartoonist, instead of shying away from controversial topics, can exercise both freedom of expression and ethical awareness with a certain amount of tact and humour. The right to criticize has faded in the name of tolerance and supposed respect of different cultures. We have to get organized and react against this new trend.

No rule to be imposed but sensitivity

The purpose of our meetings with other cartoonists is not to elaborate a professional code for cartoons. There are no rules to be imposed and it's not for me to say how cartoons should or should not be drawn. I endeavour to draw disrespectful cartoons that show respect for the reader.

Caricature is a terrible weapon: not everything is permissible and the effect created by a drawing must be borne in mind. There have to be limits. But it is also an essential tool for circumventing the taboos of public debate. In France today, a certain intellectual terrorism is suffocating debate. On a number of subjects, things can be expressed in my cartoons that can no longer be said in words.

In any given context, there is a point at which provocation runs the risk of obscuring the initial political message. My target is fanatics of all kinds and all religions. It is these people that I am making fun of, without giving way to intimidation. But I don't attack the intimate convictions of believers. Making fun of religious intolerance, the Vatican, Hamas, Hezbollah, Al Qaeda or the colonization of Palestinian territories is useful provocation. The moment it causes deaths, there is a need to think again, even if the demonstrations and violence have been manipulated.

I don't agree with the angry crowds or the people who claim to be offended because they think their religion is being made fun of. It's the fanatics that I'm after. I have never met Mohammed and have no issue with him. I choose my battles and my priorities. I've no need to pick a fight with Jesus; it's the Pope that interests me, and what the bishops are saying about AIDS. It's the people I'm after. I don't discuss what happens in heaven. In Israel, the editors-in-chief also decided against publishing the Danish caricatures, so as not to throw oil on the fire.

We are caught in a war. The most important thing is to reduce the gulf that is being created between the West and the Muslim world. If we don't, soon we'll not be able to talk to one another any more. For me, the truce on blasphemy is a temporary political strategy.

If you ask Dilem, the most well-known cartoonist in Algeria, he will tell you that, yes, he can draw Mohammed, but he will also tell you that then, there would be 50 more deaths. Is that the most pressing thing at the moment? For me the most pressing thing are the fundamentalists of all hues. As Israeli cartoonist Kishka puts it: "It is ink that has to be spilled, not blood".

The impact of cartoons on public opinion

Do cartoons in newspapers change public opinion in general? I don't know, but I act on the assumption that they do. For years I drew cartoons about the Berlin Wall without expecting them to do any good. And then the Wall came down. The same thing happened with the South American dictatorships in the 1970s. When I speak with my Arab counterparts about my discomfort at the way Jews are represented in their drawings, I start a discussion among journalists. The cartoonists will continue this discussion with their editors-in-chief. This struggle to teach people could last 30 years. I'm in no hurry. That being said, there is no question of my laying down laws for cartoonists. Let's extend a hand and talk about it. That is why I always do whatever I can to bring Israeli and Arab Muslim cartoonists together.

What if we don't agree? Let's talk about it all the same. Moreover, I believe that we should publish here what the cartoonists in the Arab world produce, so as to understand it – without, of course, having to subscribe to it. I've tried several times to have their cartoons published in *Le Monde*, without success. And yet it's important to know what they think and how they portray us.

Freedom of drawing good indicator of freedom of the media

Press cartoonists, who make (public) opinion visible, are under a lot of pressure these days. This is a good indicator of the prevailing level of freedom of speech. Cartoonists are the barometer of freedom. To measure the freedom of the media in a country, one should go and see the cartoonist – see the things he can draw.

It is a fact that cartoonists in the Muslim world are not free to express themselves as they would like. Look at Iraqi cartoonists: they aren't allowed to criticize the Shiites, nor the Sunnites, nor the Kurds. They're only allowed to have a go at America. Once you understand that ... As for myself, I'd like to help them in that struggle, invite them here for some fruitful cross-fertilization. We need to build bridges and exchange ideas. There is a cartoonist in Israel, Shlomo Cohen, who drew extremely violent cartoons criticizing Sharon. When I went to Egypt, I showed his cartoons to my Egyptian counterparts and asked them if they would do the same thing with Mubarak. They said they would with Sharon, but not with Mubarak. They didn't want to, but above all that they weren't allowed to.

You need to understand the terror that reigns there! In Algeria, the cartoonist Dilem had Bouteflika, the entire army and all the fundamentalists on his back. In the year 2006 alone, 24 lawsuits were initiated against him! We need to support him by inviting him here as often as possible. Cartoonists in the Muslim world have no choice. We must help them. When I was in Lebanon, I also talked about the Syrian army and showed my cartoons about Bashar el-Assad. They were taboo! That they criticize the Israeli army, that's OK. But that they don't realize they could also have a go at the other armies, that's something else!

They get death threats all the time, are constantly threatened, and they continue to draw nonetheless. When Stavro does cartoons in Lebanon,

he knows exactly what it means to be threatened, every day. Stavro is continually cautioned in Lebanon not to draw Hezbollah's leader, Nasrallah.

The problem is that in the Muslim world, many of them are so cornered in themselves that they cannot conceive that a French cartoonist can draw more subtle cartoons. They are convinced that in France, the Jewish lobby holds my hand when I draw. They can't believe it when I show them my cartoons on the occupied territories. When I was in Egypt, one of the cartoonists claimed that in Israel, cartoonists weren't allowed to criticize Sharon! I refuted the claim: there is a need to meet, talk and work on prejudices and representations. Let's invite them to Paris, exchange cartoons, and discuss each case: we might not agree with one another but we should still offer a hand.

I like to mix, provoke encounters. Once I had an exhibition at the library of Alexandria. Everything had been organized, when at the last minute the Egyptians asked me not to invite Israeli cartoonists. Never mind, I'll get them to meet in Geneva. And I'll take photos. In my crystal ball, I see them in 30 years kissing each other on the mouth!

Defending free expression: a writers' association perspective

Karin Clark

Allow me to approach our central theme, present and future challenges to media freedom and free expression, from a slightly different angle, from the perspective of the international writers' association International PEN.

By signing the PEN Charter, member poets, essayists, novelists – as well as editors, translators and journalists – pledge to promote literature, defend free expression and guard against censorship wherever it might occur, and to come to the support of colleagues who are being persecuted, imprisoned or attacked in their countries.

The work of International PEN

Barely over a decade after its foundation in England in 1921, International PEN¹ – then still a rather small organization with members mostly in Europe and North America – was called upon to activate all of its forces to come to the rescue of its colleagues threatened and displaced by the rising danger of National Socialism. When Prague, which until 1938/39 had been a relatively safe place of refuge for many German-speaking writers and journalists, was in danger of being taken over by the Nazis, our colleagues were trapped there without passports. Thanks to the Czech authorities, who agreed to stamp exit visas onto PEN membership cards, over 100 writers and journalists were allowed to leave Prague for London before it was too late. From England – with the assistance of International PEN, German Exile

¹ International PEN today comprises over 140 PEN Centres in 104 countries on every continent with a membership of around 20,000.

PEN, English PEN and others – they were able to continue on to whichever country would accept them and where they would be able to find help.

With the beginning of the Cold War period and the collapse of colonial rule in Africa and Asia, the number of countries in which critical voices were muzzled and writers were exposed to harassment – and worse – increased. In response, the International PEN Writers in Prison Committee was established in London in 1960. Presently, it is the headquarters and research centre for over 65 national Writers in Prison Committees in all parts of the world.

One of the most effective tools of our work, involving some 1,000 cases every year, are so-called Rapid Actions: co-ordinated letter-writing campaigns appealing or protesting individual cases of violation of the right to freedom of expression. We also make use of every diplomatic channels open to us and alert the media in our countries to the plight of our colleagues. In addition, each Centre has the possibility of adopting as honorary members persecuted colleagues who are in particular danger. The greatest hope for success in any effort, however, lies in the close co-operation with other non-governmental organizations, international organizations and other institutions working toward the same goal.

One poignant example may prove this point. In February of 2004, the eminent writer Rakhim Esenov was arrested in Turkmenistan. Nearly 80 years of age and ailing, Esenov suffered a stroke during questioning by the national security services. He was taken to hospital and later released under the condition that he not leave the country, and was warned against continuing to report for Radio Free Europe/Radio Liberty. In March of that year, he was charged under Article 177, parts 1 and 2, of Turkmenistan's criminal code with "inciting social, national and religious hatred". The charges apparently related to a book he had written that was set in the Moghul Empire of the 16th century. It had been denounced by President Niyazov in 1997 as

being “historically inaccurate”. Esenov had refused to make the requested changes, had succeeded in getting the book published in Moscow in 2003 and had managed to get a number of copies smuggled into Turkmenistan.

As soon as the OSCE informed the Writers in Prison headquarters in London of Esenov's plight, a Rapid Action call on his behalf went out, and the American, Canadian, English and German PEN Centres adopted him as an honorary member. In 2005, he was refused permission to visit Russia for medical attention, and a letter to President Putin remained unanswered. After repeated interventions by the OSCE and PEN, Esenov was allowed to travel to New York, where he received American PEN's Barbara Goldsmith Freedom to Write Award in April of 2006. Thereafter, the Turkmen authorities tried to keep him out of Turkmenistan. The OSCE once again intervened and succeeded in getting permission for Esenov to return to his own country and be left to live there in relative peace.

During the past decade, there has been a discernable shift in the methods of persecution in many countries. While Azerbaijan, China, Cuba, Ethiopia, Iran, Uzbekistan and Vietnam continue to hand out long-term prison sentences, elsewhere the trend is toward shorter detentions or multiple lawsuits and various other means of silencing writers and journalists. In reaction, the International PEN Writers in Prison Committee has, alongside its work for individuals, responded by conducting thematic and regional campaigns and publishing reports and briefs, e.g. on anti-terrorist legislation (2003) and on insult and defamation laws in various parts of the world, including in and around Europe (2007/8).

Three worrying developments

Three developments in particular are most worrying and require immediate close analysis, creative strategies and co-operative action from all of us:

Firstly, the number of death threats, physical attacks and killings has been increasing sharply in recent years, particularly in countries where competing power structures such as criminal gangs, drug cartels and political, economic or religious interest groups have taken the law into their own hands with impunity, while traditional authorities either remain powerless or refrain from bringing the culprits to justice. Fifty-five writers and journalists on whose behalf we worked during 2007 were killed because of what they wrote, almost double the figure for previous years. Among them was Anna Politkovskaya, a close friend of the Writers in Prison community, who was murdered in Moscow. Not far into the new year, we lost another dear friend in Istanbul when Hrant Dink was shot to death by a young nationalist.

Secondly, with the rising utilization of the new media, the persecution of dissident writing on the Internet in countries such as China, Vietnam, and Tunisia has become a major cause for concern. So far, luckily, there have been few instances within the OSCE region of Internet dissidents being charged or put into prison for their writing. Let us hope this does not change for the worse.

Thirdly, criminal defamation and insult laws are widely used to silence dissent, for instance in Africa, Egypt, Mexico and elsewhere. Particularly journalists who dare to accuse those in power of corruption or injustice are sent before the courts on defamation charges. While similar laws exist in European countries, they are hardly ever actively invoked. In Turkey, however, the invocation of criminal insult laws has been one of the greatest obstacles to freedom of expression, as Firdevs Robinson's in-depth report² abundantly and sadly confirms. Since mid-2005, more than 100 writers, scholars, and journalists have been prosecuted for insulting some aspect of the Turkish State. There are over 20 colleagues on PEN's list accused under Article 301 (for insult to Turkishness).³ This charge immediately makes the accused into

² Firdevs Robinson, "Freedom of the media in times of crisis: Turkey and the South Caucasus", below, pp. 61 ff.

³ See below, p.63, note 1.

traitors in the eyes of ultra-nationalists and sets them up to be the target of attacks, death threats and murder – as happened in Hrant Dink's case. Forty others are charged under similar articles of the Turkish penal code, which contains a total of 14 laws that severely infringe on the right to free expression.

Practical ways of assisting endangered journalists

Please allow me, as someone coming from an association that was forced very early in its existence to develop means of practical support for its persecuted or displaced members, mostly writers, to end with one very practical suggestion concerning endangered journalists, and a special request concerning endangered writers of every profession, one which would greatly benefit from the OSCE's support as well as from the support of every participating State of the Organization:

Since the mid-1990s, International PEN has been developing a system of scholarships or placements to assist beleaguered colleagues able to escape into exile, and has been interlinking its own network with others, as well as with individual cities and organizations offering similar chances for colleagues in need. Many of these positions are expressly designated for writers. But it has become apparent from the many calls for help from or on behalf of endangered or displaced journalists, that a similar system of practical support for them is urgently needed. Managing to reach a safe shore is one thing, the much greater feat is being able to survive in an unknown country, both physically and as a journalist. Without help, it is almost impossible. This is where placements and scholarships accessible to journalist organizations are of immense value.

But in many countries, particularly in the area of the *Schengen Agreement*, residency rights are limited to the term of the scholarship or placement. If a return home is out of the question, the only options open are to look for a

new scholarship, apply for asylum, which is rarely granted, or be deported. Please help us to assure that endangered writers and journalists brought into our countries under the auspices of the human rights representatives of national and international bodies and acknowledged non-governmental organizations are granted refugee status and the permission to reside and work in their countries of refuge.

Freedom and the new information and communication technology

Reino Paasilinna

As we all know, new media are used by citizens to conduct grassroots activities. They serve as a platform for collective and civil action. In this respect, the Internet is a very disruptive technological innovation. It challenges legal principles, regulatory traditions and classical business models. The media have become more powerful but also more fragmented. People and non-journalistic bodies generate their own news and media and can cut out journalists.

Information and communication technology (ICT) surveillance, security and privacy are key political issues. Protection of citizens' rights is a major concern for governments, especially because legislation has barely kept up with the technological changes. The freedom of the press, of expression and speech, including the right to criticize, constitutes one of the key pillars upon which the European Union (EU) is founded.

ICT products that make our life easier also create problems for citizens and for policy-makers. How can citizens trust governments, businesses or non-governmental organizations not to misuse their personal data, when there are clear cases of abuse? How can policy-makers pass legislation which keeps pace with technology but doesn't stop the free flow of information or step on the toes of free speech? The big question for Europe, and eventually for the world, will be: how to achieve a truly free Information Society on a global scale without undermining the international principles of citizen privacy and security and content rights.

People can now be targeted with greater precision. Just this week, the Taliban threatened to blow up telephone masts across Afghanistan. They said that foreign troops are using the signals to track down rebels. The ICT industry is, in some respects, a sponsor of censorship and surveillance. The routers, the software, the blockers, the filters and the codes are very often produced in high-tech countries.¹

Although the EU has strong principles on freedom of expression and freedom of the media, it is legislating more and more on copyright issues and against cybercrime, and is co-operating internationally with different regions on ICT issues.² To be frank, questions of global media freedom are not at the top of the EU's ICT agenda. It is more interested in innovative services, inclusion, providing public services EU-wide, global inter-operability and matters of data security.³

There has been a global trend towards increasing surveillance, both technically and legally. The laws and policies that once limited surveillance have been weakened or ignored. Since the September 11 terrorist attacks, many new laws have been adopted to allow surveillance of communication in the name of the war on terror.

In many countries, governments want to limit the use of the new media. They want to keep people from using them and they want to prevent unauthorized groups from producing material by means of them.⁴ Governments employ large numbers of specialists and analysts to fight this "problem". The effectiveness of their approach is questionable, however. These governments

1 See e.g. James Barry, *New media: the press freedom dimension, challenges and opportunities of new media for press freedom* (UNESCO, 2007).

2 See: EU Information Society Policies <<http://europa.eu/scadplus/leg/en/s21012.htm>>; EU eContent Policies <<http://europa.eu/scadplus/leg/en/lvb/l24226g.htm>>.

3 See: Security on the Internet <<http://europa.eu/scadplus/leg/en/lvb/l24153a.htm>>.

4 See: Leading surveillance societies in the EU and the World 2007, the 2007 International Privacy Ranking, at <<http://www.privacyinternational.org/article.shtml?cmd%5B347%5D=x-347-559597>>.

risk provoking a “hurricane of change”, which will use the new media as its vehicle.

These days, people are not defenceless against censorship. They invent ways to get around government information blockades. It is as though a kind of industrial war is raging between some countries and their civil societies: who has the better technology to get and spread information? Information is like oil: it contains a great deal of energy, but it can also blow up. Unlike oil, though, information is not usually a government monopoly.

In the end, democratic societies are better equipped than others to deal with the benefits and problems created by new media. Because they are open societies, the “hurricane” of free media blows through them and does not cause them to fall.

Fidel Castro understood the power of the media well when he said, “Socialism in Central Europe failed because people received more information than was necessary”. Criticism that is spread through the new media channels may indeed have bad results for individual firms, politicians and even governments, but it does not threaten the whole of society.

The recent incident involving YouTube and Pakistan is a good example of how difficult these issues have become.⁵ Let me remind you of what happened: the Pakistan Telecommunication Authority (PTA) tried to block access from Pakistan to YouTube because it considered some material in YouTube to be insulting to Islamic values. However, in the process, the PTA accidentally blocked access to YouTube not only from Pakistan but also from several other countries.

⁵ See: Pakistan blocks YouTube website (*BBC Online*, 24 February 2008).

This incident (again) raised certain fundamental questions concerning the global communication system: when a single video on one Internet site causes – even unintentionally – the whole system to collapse, what is the extent of the responsibility of a single company? Should YouTube, even if this goes against some Western values, use censorship before it is asked to do so? How can governments and societies defend certain values in a global communication network where national barriers do not exist?

The Pakistani example was not the first and it will not be the last incident of this kind. New systems of communication and self-expression will continue to spread globally. How do governments respond to these challenges? Will they try to prevent the change or will they try to adapt to the change?

Citizens have become skilled communicators, and ICT systems are increasingly diverse and difficult to control. States with limited freedom of expression are facing new challenges.

Border, travel and communications surveillance schemes and implications for civil liberties

Gus Hosein

The global environment for civil liberties is as complex as are international relations. An unsophisticated view of both presumes that we have, on the one hand, an intransigent United States Administration under Bush facing its final months and, on the other, a more progressive Europe continuing to struggle against the United States in its efforts to preserve civil liberties. Sadly, the situation is far more complex. Only if we try to understand this complexity, rather than relying upon simplistic views of the world, can we see fault lines, potential coalitions and possible strategies. Only then does the right to privacy have a chance.

We can get an idea of the dynamics at work here if we look at how government surveillance schemes have altered our understanding of borders, movement and free expression. These areas of public policy are amongst the most complex and least understood, especially since public debate is kept to a minimum. Therefore, it is not surprising that there is a high level of support for travel and border surveillance as compared with other forms of governmental oversight. In a poll conducted in Britain for the Joseph Rowntree Reform Trust and published in February 2008, around 50 per cent of persons asked were opposed to government surveillance plans like data-sharing, identity cards and fingerprint databases: clearly, the government has not yet come anywhere near convincing the population that it needs to interfere in their private lives. But the poll came up with one remarkable finding: less than a third opposed the government's plans to develop travel and border surveillance schemes.

Border surveillance

With the Bush Administration only months away from the end of its term, the European Union (EU) has picked up the torch and is running with ill-considered policies on border surveillance. The legacy of the Bush Administration is that the EU will succeed. Not only because its decision-making processes in the area of security affairs lack accountability. Nor is it just because the EU has been complicit in American travel surveillance programmes for years. But mainly it is because of the simple fact that the prevailing tendency in the United Kingdom and across Europe is to call for “tougher borders” without quite knowing what that means.

We don't really mind border surveillance because we always imagine it applies to someone else. But nowhere in the world are you more powerless than at the border of another country. Prison populations have more rights than migrants or business travellers. You are dependent on the whim of any government official's mood or interest. Worse yet, you're at the mercy of technology that will never quite work the way governments promised it would (assuming they bothered to tell you about it).

We're all relatively familiar with the American scheme, dubbed US-VISIT, which collects fingerprints and a digital facial scan from visitors to the United States. This data will be kept for between 75 and 100 years. At the time it was introduced, some governments and foreign nationals protested. Brazil even retaliated against visiting Americans.

The protests never gave American officials any cause to worry. They knew that all other countries would soon want to have its own toys to play with and follow the United States' example. Japan implemented a fingerprinting system in November, advertising with pride that it had caught up with America's lead in the world. Russia and Britain have similar plans, and in February 2008, the EU announced its own fingerprinting scheme.

Europe's plans for border surveillance are not restricted to combating terrorism. Nor are they restricted to collecting information on foreigners. They involve monitoring the movements of all travellers, citizens and foreigners alike, and for all purposes, from immigration management and petty crime to terrorism. Unlike the United States scheme, which excludes children, the EU proposal foresees fingerprinting all children as young as six years old. The Bush Administration has responded by applauding the European governments.

Travel surveillance

The United States are also leading the world in collecting data from airlines on travelling behaviour (who paid for your ticket, who your travelling companions are, the name of your travel agent, your travel history, and other information). If airlines fail to comply, they can be forced to pay fines or lose landing rights. The United States authorities retain this data for at least 15 years.

In order to identify suspect travellers, the United States Government subjects the data gleaned from airlines and reservations systems to the data profiling algorithms of a system called the Automated Targeting System, originally designed to profile cargo. When this procedure was uncovered by government auditors last year, American policymakers were shocked. Yet there was an awkward silence from European governments. Again, United States officials knew they need not worry, because any protests would quickly subside as other countries adopted similar techniques.

Indeed, after having fended off the American requests for such data for three years, the EU has agreed to stand aside and permit European airlines to submit the requested data to the United States authorities on the condition that it also be given access to it. In November 2007, the EU announced its own passenger profiling plans. The United Kingdom has been doing this for

years already, yet no one actually knows how. European governments will now collect the same information the United States Government does, and retain it for 13 years.

Communications surveillance

We have seen how governments have restricted the travel and movements of journalists, dissidents and unpopular leaders and thinkers. International policy changes in communications surveillance will also affect the right to free expression. Policy shifts by numerous governments and companies are transforming our understanding of the constitution of the Internet.

Privacy and free expression are bedfellows. Strange as it may sound, the history of both rights are often connected, and not always in antagonistic ways. In the context of Internet and global communications networks, the relationship is actually quite complementary: free expression may well be enabled and protected by privacy rights such as the right to anonymity.

The right to anonymous free speech is a fundamental part of the right to free expression and participation in public and democratic processes. Governments have tried time and again to use surveillance techniques to restrict or chill free expression. They have required registration of printing presses, monitored and drawn up membership lists of activist organizations, registered political opinions, interests and affiliations or monitored journalists to uncover sources. Generally, though, these methods have been rejected, insofar as privacy, free expression and a free media have been considered integral to our political systems.

Now the situation is much more perilous, due not only to the existence of the Internet but also to policy responses. Piracy and terrorism laws have increased the number of legal obligations imposed upon Internet service

providers. Personal information (including identity information) can now be harnessed, and even combined with location data.

This is happening all while the essence of the Internet as a free medium is also being transformed. Social networking sites, where personal information flows willingly from the company-owned hosted page, have multiplied. Journalist bloggers are uncovering major stories with the help of confidential sources. Under these new laws, we can identify those sources, and we can, more dangerously, identify the readers.

With this hyper-interactivity on the Internet as it is today, every user is a communicator. For years now, bloggers have been gaining traction, and recent studies show that many Internet users rely heavily on blogs for their news. But now every reader of a news story can become a commentator, appending his or her views to the bottom of articles. In a recent discussion with a Thai colleague I heard how cybercrime laws are being used to identify those who commented on a news story relating to attitudes about the King.

It is hardly a surprise that governments are clamouring to go after these bloggers. Fortunately, the very media that enable their arrest also draw attention to it.

Even when a blogger's identity is not immediately clear through some government registry, the data can be garnered from service providers. International companies like Yahoo! and Google, have been subjected to condemnation the world over for co-operating with undemocratic governments that seek the names of the users of their services, including journalists. For anyone who has ever set up a webmail account, this sounds like an easily avoidable situation, since you can register under the name of Mickey Mouse for all anyone knows.

But this will not stop governments from getting what they want. They can follow one of two paths to get their suspects: follow the data footprints or change the law. Many governments, including even Germany and Italy, have rules requiring identification of Internet customers. Some countries in the OSCE region are passing laws requiring cybercafés to check identity cards and passports before granting access, while other countries now require webmail providers to record the real names of their customers.

Governments also know that as long as you have to pay for Internet access, someone somewhere knows your name. They also know that there are footprints being left everywhere on the Internet. This “traffic data” exists in logs that identify who has been talking with whom, who has been e-mailing and messaging whom, when, possibly where and sometimes even why. Under the banner of counter-terrorism, governments across Europe have banded together to force the EU to pass laws requiring all telephone, Internet and mobile phone providers across Europe to start harvesting this information, so that it can be made available to police for any investigation, regardless of whether it is for terrorism.

Again, this policy came in part from the Bush Administration. This significant policy change introducing “communications data retention” was made at the behest of the Bush Administration, based on a letter that was sent to the EU from the White House in October 2001 itemizing all the changes to EU law that the United States expected in response to the terrorist attacks the month before. The European Union capitulated and changed its privacy laws to permit mass surveillance. Ironically, the Bush Administration is now arguing to its own Congress that it must too have this power, for fear of being left behind. The United States are now looking to copy Europe on a policy that it pushed Europe to adopt in the first place.

As a result of these changes, our right to free expression has been transformed. A simple comment posted on a blog can be traced back to the

blog service provider, who will have a log of the Internet protocol address, a unique identifier, which can then be used to track down the comment maker's Internet service provider, who will then be compelled to identify the account holder who was assigned that unique address. So essentially, every phone call made or e-mail sent by any Internet user across Europe, whether consumer, journalist or dissident, is now logged, and this data can be used by governments with impunity to identify habits, friends, colleagues, sources, networks and sympathizers. And this data will be shared internationally.

Interactivity and global data flow are certainly on the rise and play an important role in our lives. In the age of interactivity, freedom of speech, freedom of expression, freedom of association and freedom of assembly are essential ingredients of an open society. Ironically, however, in this same interactivity lie the seeds of repression, sowed by mass and indiscriminate surveillance. The relationship between privacy and free expression is set to become ever more perplexing.

Conclusion

The fundamental flaw in government policies in recent years is the belief that if you gather enough information and throw enough money at a problem, you have dealt with it. This is the idea behind closed-circuit television (CCTV) surveillance, which we know doesn't really work. We can't even begin to count how much money we have thrown at it, we still aren't quite sure what problem we're solving, yet everyone seems so darn happy about it. The same applies to the collecting of identity and biometric information – the fingerprinting of an entire population of innocent citizens, for instance. At least expensive and intrusive identification systems and other related surveillance systems are receiving some form of public and parliamentary scrutiny (though it took years for this to happen).

But when it comes to border, travel, and communications surveillance, we hardly pay attention to the conduct of our governments, so they escape scrutiny. The American people haven't questioned the billions of dollars spent on border surveillance in the United States, because they're just happy to see their government doing something about it. Most United Kingdom voters (and political parties) would probably argue along similar lines. So we never find out whether it all works.

Similarly, reporting mechanisms for communications surveillance are so weak that we do not know how many intrusive investigations are conducted each year, nor do we know which or how many international, national, or even local government agencies have the power to access our personal information. In the spring of 2008, the British population was shocked to learn that local governments were using intrusive surveillance techniques, originally designed to combat international organized crime and terrorists, to monitor families (to verify that they lived in their registered homes) and pet-owners (to ensure that they picked up after their dogs). Local councils have abused this same surveillance regime for years to monitor call records and e-mail lists, but the public could never get their head around the nature of this surveillance. Unmarked parked cars full of local government officials outside of homes are, in the minds of many, an identifiable, though unforgivable, intrusion. But if these same officials monitor the movements of these same citizens by watching their mobile phone records, no one quite understands how this occurs. Nor can they be expected to, because there are no reporting regimes to let them, or Parliament, know, apart from generic tallies at the end of every year.

We do hear, when permitted, about the failures. The list of high-profile border failures is long and depressing:

- Many already know about how Cat Stevens' plane was diverted on a flight to the United States. Senators and Congressmen have been on

United States watch lists and been prevented from boarding planes without extensive searches.

- When the data profiling system crashed at the Los Angeles airport in August of last year, 20,000 international travellers (United States citizens included) were prevented from deplaning for more than 14 hours.
- Maher Arar, a Canadian citizen, was extraordinarily rendered to Syria and tortured for 11 months because a border system wrongly interpreted his file, based on information provided by the Canadian government under data-sharing agreements, and concluded he was a terrorist (eventually the Syrian justice system recognized the mistake and sent him back to Canada).
- In February 2008, six men from Pakistan close to President Musharraf were wrongly arrested at London Gatwick airport and sent to the anti-terrorist police station for fingerprinting, questioning, and DNA collection. They were questioned as though they were plotting against Musharraf, but the police later discovered that these were Pakistan Government officials from Musharraf's own party.

But these cases, and the thousands of similar cases, are swept under the carpet when a government is hailing all the phenomenal yet unachievable successes of the systems they designed for solving problems they could not quite identify. Does it all work? We never even bother to ask the question, so we hardly deserve an answer. But we will get the answer the next time we're detained somewhere in the world, based on communications information gleaned from the Internet, erroneous travel data forced from airline databases or fingerprint data compiled using technologies that were never engineered for the mass screening of populations.

Freedom of the media in times of crisis: Turkey and the South Caucasus

Firdevs Robinson

There is a saying in Turkish: “If you want to see how good a man is, watch him on a bad day.” A modern version could be: “watch him during an electoral race”, for there is nothing like the heat of an election campaign to test both journalists’ professionalism and governments’ commitment to democracy. All three countries that I have recently visited, Azerbaijan, Armenia and Georgia, either have gone or will be going through this test. Georgia and Armenia held presidential elections in January and February of this year, respectively. Voters in Azerbaijan will go to the polls in October to elect their president.

There is another, perhaps equally tough test of whether governments really conform to the standards expected of a modern democracy: how they uphold and protect the freedom of expression and information in times of crisis. And in today’s world, more and more countries are finding themselves under the spotlight.

Turkey

Turkey is one such country. In Turkey, it seems, progress with regard to rights and liberties and willingness to debate crucial political, social or historical issues is something reserved only for times of relative peace and harmony. The early years of the new millennium – when the economy became more stable and began to grow, when the European Union seemed welcoming and, perhaps most importantly, when the Kurdish insurgency was brought under control – were such a time. A new government with a comfortable

majority pursued a broad reform agenda, and there were many changes for the better. In recent years, however, the perception of a real or imagined growing threat to national security has halted this trend or even reversed it. Journalists working and living in Turkey are finding their lives more endangered and their work more obstructed than ever.

According to the *Bianet 2007 Media Monitoring Report*, 254 people, mostly journalists, and six media organizations were tried in court for so-called “speech crimes” last year. The most notorious article of the Turkish penal code is Article 301, which criminalizes “insult to Turkishness”. Over the years, several prominent journalists and writers have been charged with insulting Turkishness, among them Hrant Dink, Orhan Pamuk, Elif Safak, Lale Sariibrahimoglu and Ragıp Zarakolu. Article 301 has serious ramifications for freedom of speech in Turkey. But the gravest danger it poses is that it turns journalists and writers into “free for all” targets. The Turkish-Armenian journalist Hrant Dink was killed following his high profile trial. Nobel Prize winner Orhan Pamuk was forced into exile after his appearance in court. Almost all other journalists and writers accused of insulting Turkishness fear for their lives.

For many journalists in Turkey, a quick and simple test of the Justice and Development Party’s commitment to democracy has been its handling of the investigation into the murder of Hrant Dink and the way it has dealt with Article 301. So far, on both counts, it has disappointed deeply.

In Hrant Dink’s case, the police have been accused of trying to obscure evidence to protect suspects and of possibly being linked with the assailants. The shocking scenes of policemen posing with Dink’s suspected murderer when he was captured last year were conjured up again in court, when the defence lawyer made hateful, insulting comments directed towards the victim’s family and community.

As for Article 301, the Turkish Government has made it clear that it has no intention of abolishing it. It did finally approve a long-awaited amendment to the law on 30 April 2008¹. But Article 301 continues to fuel hatred and violence in Turkish society, and it should be abolished. Not amended, not given cosmetic changes, but repealed, along with the other articles of the Turkish penal code that inhibit freedom of expression. On 17 June 2008, publisher Ragip Zarakolu was sentenced to five months in prison under Article 301. He was found guilty of insult under the reformed law.

Equally repressive and worrying for journalists and writers is Article 218, which declares “turning people against military service” to be a punishable offence. Writer Perihan Magden was charged under Article 218 for writing an article entitled *Conscientious Objection is a Human Right*. Luckily, she was acquitted. The penalty for convictions under Article 218 is several years in prison.

Dark clouds circle over Turkey in times of crisis, and right now we are going through a very turbulent time. With the security situation getting worse in the south-east along the Iraqi border, working conditions for journalists in the region have been extremely difficult for several months now. Military authorities have been preventing journalists from travelling freely in the area. Both local and foreign journalists have been pressured to reveal their material and sources. In October, a court ordered a search of the office of *Dogan News Agency* reporter Emin Bal. His recordings and notes were confiscated. Other local journalists have been detained and questioned for reporting and filming in the area or for interviewing Kurdistan Workers’ Party (PKK) militants.

¹ The amendment replaced the word “Turkishness” by “Turkish nation” and reduced the envisaged prison term from three to two years. To make prosecution under the Article more difficult, there is now a provision requiring the Justice Minister’s approval before prosecutors can launch cases.

For many, the most disturbing development is the State's seeming toleration or even encouragement and promotion of militarism in the society. A few months ago, the Chief of Staff called a press conference. He displayed a flag that secondary school children had made. They had coloured it with their blood. He praised their patriotism, relating that they had declared themselves ready to swap their pens for weapons, that they all were prepared to die as martyrs.

The cross-border operation into Northern Iraq has been accompanied by excesses of the worst kind in the Turkish media. Leading TV stations have been broadcasting inflammatory ultra-nationalist film series for a while now, and getting very high ratings for them. Journalists now seem to be taking the initiative in turning against their own colleagues. When columnists Perihan Magden and Ece Temelkuran dared to criticize the Chief of Staff for showing the bloody flag, it was not the prosecutors that came after them. It was their colleagues, exposing them in various newspapers as potential targets. Bekir Coskun, *Hurriyet* columnist and outspoken critic of the government, had to hire a bodyguard after some newspapers published pictures of his family. And just recently, in a television pop music competition, Turkey's well-known transsexual pop star Bulent Ersoy said, "I am not a mother, nor can I ever be a mother, but if I had a son, I would never send him to fight in this war." She was charged, under Article 218, with trying to weaken support for the country's powerful military. She's facing a four and a half year jail sentence. The Supreme Broadcasting Council is discussing Ersoy's case, and the TV station has stated that it would reconsider its contract. So far, nothing unusual for Turkey. But the venom that poured from newspaper columns and television programmes was so strong and so personal, I fear for Ersoy's safety. And for the safety of every individual that publicly stands out!

Governments have a duty to protect journalists from social violence, even if they are perceived to have broken the law. Turkish Prime Minister Recep Tayyip Erdogan is not setting a good example by regularly taking

journalists and cartoonists to court. He is arguably the most intolerant Prime Minister Turkey has had in recent years. But more importantly, he needs to reconsider the implications of his strong language towards the journalists that criticize him. When Bekir Coskun declared he did not see Abdullah Gul as his President, the Prime Minister told him he should renounce his Turkish citizenship, pack up and go.

We all know that criminalization of journalists' offences encourages violence against them. Showing contempt for the media, dividing and ruling them, putting economic and political pressure on them and damaging their credibility and trustworthiness in the eyes of society backfires on politicians, too. Without free, independent and credible media, it is not possible to have strong, prosperous, stable societies. This is the key message that needs to be heeded by Turkey and also by its neighbours in the South Caucasus.

Azerbaijan

With an October election on the horizon, the stakes are high in Azerbaijan. Yet, although the world's eyes are on the country, there seems to be less and less tolerance for dissenting voices. As one Western diplomat told me last week, "both foreigners and Azerbaijanis themselves are struggling to understand and explain the ferocity directed against the independent media."

The year 2007 was a difficult one for the media in Azerbaijan. At one point, there were nine journalists in jail. After a presidential amnesty, we now have four journalists in prison. Eynulla Fatullayev, the editor of *Gundelik Azerbaijan*, is charged with libel, insult and terrorism. Ganimet Zahid, the editor-in-chief of the daily *Azadliq*, was arrested for hooliganism. His brother, Mirza Sakit, an outspoken critic of the government, has been in prison since October 2006 for possession and use of drugs. Mushfiq Huseynov of *Bizim Yol* newspaper is in jail for taking bribes.

Violence is the biggest danger facing journalists in Azerbaijan. *Monitor* journalist Elmar Huseynov was killed following criminal proceedings against him. Three years later, we are still waiting for those institutions and forces that are so quick to prosecute journalists to find Huseynov's killers and bring them to justice.

Like in Turkey, mob violence against journalists is not uncommon in Azerbaijan. In the latest case, on 22 February of this year, *Azadliq* reporter Agil Khalilov was attacked and beaten while filming an illegal transaction. He was later threatened and stabbed. In April, pro-government television stations aired a half-hour video alleging that the stabbing of Khalilov was related to a homosexual relationship. There is little serious investigative journalism in Azerbaijan, and attacks like these further intimidate journalists.

The government and pro-government media are very vocal in their criticism of the low professional and ethical standards of the Azerbaijani media. I have just completed a series of documentaries and debates on this issue, and I agree there is a need to develop and strengthen professional standards. Journalists have responsibilities and duties as well as rights.

While many journalists acknowledge their media's shortcomings and strive to raise standards, it is true that some behave in a totally unprofessional manner, not only towards politicians and private individuals, but also towards other journalists.

Nationalism bordering on incitement to ethnic hatred does not seem to be discouraged among journalists. One of my darkest days in Azerbaijan was the day of Hrant Dink's funeral last year. I am still searching, among the pages and pages of hateful comments about the thousands of Turks who walked behind Hrant's coffin, holding placards saying "we are all Hrants, today we are all Armenians", for the expression of a hint of empathy towards a murdered colleague, a fellow journalist.

Lack of professionalism, however, is not exclusive to the opposition media. Some of the worst examples of unethical journalism I have come across have been displayed by staunchly pro-government media. Persistent and personal attacks on opposition leader Ali Kerimli were broadcast by the state and other pro-government media outlets. Yet one does not come across any pro-government journalists in dock, charged with libel and defamation – not that I would ever want to see them there.

The OSCE and the Council of Europe are leading efforts to persuade Azerbaijan to decriminalize libel and defamation and to guarantee the independence of the judiciary. In this election year, the electoral code may well come under scrutiny as well. The OSCE, together with the BBC Trust, is committed to training journalists in election reporting. I myself did election training for Azerbaijan's *Public Television* late last year. The impression I had was that shortcomings in the electoral law or the competence of journalists are not really the issue. On the contrary, I found my colleagues and some of their managers at the public channel open-minded and enthusiastic about electoral training. However, they can only perform their primary public duty as providers of free and fair information if the political will exists at the highest level to make these elections a genuine and democratic process.

Armenia

“Free flow of untainted information”, “impartial and non-partisan reporting”: these are not phrases we would have used to describe the official Armenian media during the presidential election campaign earlier this year. The Armenian broadcast media were criticized for their unfair treatment of the candidates in the February election. The OSCE's Election Observer Mission, in its preliminary report, stated that the opposition candidate, Levon Ter Petrosyan, received extensive negative coverage and that the National Commission on Television and Radio did not fulfil its mandate to monitor compliance with legal provisions. One TV station in Armenia's second-largest

city, Gymru, gave extensive coverage to Ter Petrosyan and soon found itself at the centre of a tax investigation. Also, several clients withdrew their advertising.

There were attacks on journalists on the day of voting. Two journalists were beaten up by unknown attackers and security forces were criticized for not interfering and protecting them.

In the print media, there was more pluralism and diversity, but considering the limited reach and influence of newspapers in Armenia, the flow of impartial information was not sufficient to enable voters to make an informed decision at the ballot box.

Armenia's media legislation could be improved, but lack of implementation, not inadequate legislation, is the biggest obstacle to freedom of speech. The public broadcaster has a special responsibility to provide balanced and impartial information on the election and the candidates.

For the private media, economic pressure is almost as restricting as political pressure. In order to be financially independent and self-supporting, media organizations need to operate in a liberal, free market economy. Armenia is not there yet.

Georgia

I visited Georgia in December, after the street protests and closure of *Imedi TV* but prior to the presidential elections. As the commentator Alex Rondeli, who later became Director of the Foreign Policy Research and Analysis Centre at the Georgian Foreign Ministry, put it, "Georgia found itself in a no-man's land between reality and the elections. It had to face the moment of truth." Events, or rather the Government's response to the 7 November protests in Tbilisi, were unexpected, and the Georgian Government failed

to manage the crisis. Weeks before a democratic election, Georgia found itself the target of strong international criticism over its heavy-handed and occasionally brutal treatment of anti-government demonstrators and opposition media.

I spent an afternoon in the *Imedi TV* building, hours before the station resumed broadcasting. The extent of the destruction by security services was there for everyone to see. The popular anchorman Georgy Targamadze, *Imedi's* director at the time, told me how the station's broadcasting equipment had been systematically destroyed.

Talk about ferocity! What were they thinking when they raided the building with three thousand masked men with machine guns? I put this question to David Bakradze, who was Minister for Conflict Resolution at the time and is now Minister for Foreign Affairs. He did acknowledge that the case needed review and that there were lessons to be learned.

Others I spoke to, especially journalists, agreed that 7 November was a wake-up call for Georgia and a reminder of how fragile its institutions still were. Everyone condemned the use of force against *Imedi*. Quite a few also expressed their unease over *Imedi's* editorial policy and ownership issues. Not at the time, but later, when he left the station, Mr. Targamadze said that "*Imedi* staff accepts neither the methods that the authorities are using to do away with the owner and opposition leader Patarkatsishvili nor the methods that Patarkatsishvili used to get to power."²

After the presidential election, the OSCE, the Council of Europe and the European Union gave a clean bill of health to Georgia, albeit with some

² The billionaire owner of *Imedi*, Badri Patarkatsishvili, died in February in London, apparently of a heart attack. The majority of journalists have now left *Imedi* and work with other media groups in Georgia instead.

reservations. “Georgia should strengthen media freedom and pluralism and the independence of the judiciary,” the European Union stated.

Georgia looks determined to turn its face towards Europe. Hopefully, this will help speed up the creation and development of strong institutions. However, there is a worrying tendency among journalists that I cannot help but notice. Several journalists that I spoke to in Georgia recently told me they felt uneasy about expressing negative opinions or pointing out the shortcomings and the problems in their country, for fear of damaging Georgia’s prospects of becoming part of Europe or joining NATO. I hope public exhortations like the ones from the European Union and others will discourage this creeping self-censorship. There is a need for developing effective self-regulation in all the countries in South Caucasus, but self-regulation and auto-censorship are two very different things.

Media freedom under threat in the Commonwealth of Independent States

Oleg Panfilov

Allow me to begin by looking backwards, especially since we are today marking an anniversary truly worth remembering. Ten years ago, Mr. Duve arrived in Moscow to meet and consult with representatives of non-governmental organizations in connection with the establishment of a new OSCE structure – the Office of the Representative on Freedom of the Media (RFOM).

At that time, Mr. Duve, who was well known among journalists, also as a politician, spoke for several hours with my colleagues and myself, discovering facts that occasionally astounded him about what was happening in the field of journalism in the former Soviet republics that now form the Commonwealth of Independent States (CIS). I remember how he exclaimed “No!” or “That can’t be!” in amazement when he heard the statistics or stories about the multitude of cases of repression against journalists in these countries. During the first few years of its work, the OSCE Office proved not only how important but also its how effective it was, because, compared with non-governmental organizations, it had greater resources at its disposal.

The new mechanism for protecting independent journalists aroused both support and disapproval. It is easy to guess that the latter came from the post-Soviet countries, where one believes that the requirement to abide by national legislation and international law violates the principle of state sovereignty. What is more, the disapproval has gained momentum each

time a journalist has successfully been protected or gotten out of prison or a newspaper has been rescued from pressure or persecution.

We should not, of course, harbour the illusion that things can be changed rapidly in the former Soviet republics, forgetting about the 75 years of Soviet power and totalitarian political rule. Even 16 years after the collapse of the Soviet Union, we can pride ourselves on only a few insignificant successes, as we observe how slowly – sometimes, it seems, too slowly – society is changing. Governments, even as they declare the need for democratic development, are using the same methods for cracking down on dissenting voices the Soviet Union did.

Not only do we have to register frequent violations of the rights of journalists to write analytical reports, we also find ourselves having to persuade journalists to drop their indifference to violations of their own rights and those of their colleagues. Very often, we see the authorities and journalists doing one and the same thing: both demanding more responsibility from the other but failing to admit to their own mistakes.

So we often encounter not only positive changes, but also, unfortunately, have to take note of monstrous new facts testifying to a blatant disregard for both national laws and the commitments the countries assumed when joining the OSCE.

In the former Soviet republics, the authorities and the people are engaged in a competition to disregard the laws, in which the governments have a formidable advantage. Yet they also bear a greater responsibility, not only to fulfil the promises made to the nation during election campaigns, but also to honour commitments made to the international community.

What has happened in the former Soviet republics over the past 10 years? The changes have been both positive and negative. In Georgia and Ukraine,

positive political transformations have improved not only the relations between the government and the media, but also the public's attitude towards journalists and freedom of speech.

So far, Georgia is the only country in the post-Soviet environment that has prohibited the setting up of state-owned media and amended its criminal code to take out repressive articles formerly invoked against journalists. Tensions still exist between journalists and the authorities, and the situation in the country cannot be said to fully conform to the principles of freedom of speech. Still, the most important thing has happened in Georgia: there has been a change of political climate. The opportunity exists in Georgia for real dialogue between journalists and the government, an opportunity which, unfortunately, is not used enough.

Ukrainian journalists have also managed to create a situation in which the attitude towards them has improved, in spite of heavy losses: the killing of Georgy Gongadze, many cases of attacks on journalists, court trials and pre-packaged news stories – an invention of Russian spin doctors that was enthusiastically applied in Ukraine by President Kuchma's staff. As in Georgia, Ukrainian authorities and journalists need to seek a common ground and a way to rapidly set standards for high-quality journalism.

The other former Soviet republics are experiencing events that can rightly be called “monstrous”, often running counter to logic and common sense. At Moscow's Domodedovo airport on 28 February, the day of my departure to Vienna for this conference, two Russian journalists, the married couple Natalya Morar and Ilya Barabanov, strapped themselves together to avoid Natalya's forcible deportation from Russia. She is a citizen of Moldova, a country with which Russia maintains a visa-free travel regime. Yet since last December, she has already twice tried unsuccessfully to return to her job at the Moscow magazine *The New Times*. On both occasions, this 23-year-old

woman was accused upon trying to enter Russia of constituting a threat to the nation's security.

I am neither a politician nor a diplomat, so I will not bother to invent nice words to describe political developments in what used to be the Soviet Union. I will have to tell things as they are: in many of these countries, the attitude towards independent journalists has deteriorated and, in some cases, has reached a critical low. In Azerbaijan, for instance, a record number of prison sentences of various lengths were handed down to journalists in 2007. Russia is responsible for a record number of criminal cases initiated against journalists, averaging over 50 a year. Another Russian record is the number of articles in the criminal code applicable to journalists: there are five of them, including a new article making instigation of extremism a punishable offence. Even authors of critical articles or statements against politicians or state officials may be accused of political extremism.

Armenia is also close to setting a record: since last October, there have been over ten attacks on journalists, including during the presidential election on 24 February. In this category of violations of journalists' rights, Armenia's place at the head of the list is shared by Kyrgyzstan. The "prize" for the highest number of detentions and arrests goes to Belarus, where a reporter can be detained and put on trial merely for attending a political demonstration in his or her professional capacity.

The political and economic stability in Kazakhstan in no way means that conditions have been established there for freedom of the media. In this country, the biggest media traditionally belong either to the State or financial structures close to the President and the Government. While all the prerequisites for setting up a quality media business exist in Kazakhstan and in Tajikistan, which has recently emerged from a civil war, the independent press is only just coming back to life and so far is still very weak. In addition, in Tajikistan – as, by the way, in many other CIS countries – national television

is still under a government monopoly and it is not possible to set up a private, independent TV channel – either because of licensing restrictions or because of the authorities' reluctance to allow any competition with state propaganda.

In two countries, Belarus and Uzbekistan, independent media are in danger of disappearing altogether. Finally, there is Turkmenistan, a country in which virtually no independent media exist and prospects for their establishment are doubtful. In Turkmenistan, as in Tajikistan, the basic law on the press adopted back in Soviet times, in 1990, is still in effect.

The existence of media laws in the former Soviet republics, even if close to international standards, does not at all mean that conditions have been established for genuine freedom of speech. It is Uzbekistan that has the most progressive media laws, but, according to many indices, the respect for free expression is on a level with third world countries, with a well-organized system of repression against independent journalists, state censorship and propaganda that differs little from the former Soviet propaganda.

No assessment of the media situation in the post-Soviet region would be complete if Russia were left out of the analysis. One could even venture to say that in most of this region, the media situation is dependent on what happens in Russia. Just over 10 years ago, journalists from Tajikistan, Uzbekistan, Turkmenistan, Belarus and Kazakhstan were seeking refuge in Russia, where they found not only support, but also an opportunity to work. Nowadays, it is Russian journalists who leave for the rest of Europe, including Ukraine, and the number of those perceiving Russia as a country of equal opportunities and liberal values is decreasing.

Seeing what has happened to Natalya Morar, many will probably realize that the restrictions placed on the work of journalists in Russia go beyond the suppression of freedom of speech and the addition of repressive articles

to Russia's legislation. They include a primitive squeeze-out of journalists from the country for their professional engagement. This has also been experienced by the more than 40 foreign journalists and writers who have been refused Russian visas over the past eight years.

To my great chagrin, Russia is setting a bad example to the former Soviet republics. The fact that journalists have been killed, beaten, and subjected in large numbers to prosecution in Russia is clearly having adverse repercussions in these other countries. For some reason, Russia's hard-line crackdown on independent journalists, the flourishing of state propaganda, the manipulation of information and the purchase of media by financial structures close to the authorities is often seen as a model for the other CIS countries to follow. Indeed, the authorities of many of these countries are competing, as it were, to follow Russia's example: who can create the most despicable conditions for independent journalists?

Living in a state of disagreement with the Russian authorities

Alexei Simonov

Please consider my speech an extremist one, according to the meaning of the word in Russia, where extremism can be defined as “disagreement with the authorities, expressed in a rude way.”

There are two different Russias. There is a Russia as perceived by the ruling elite, and another as perceived by ordinary people.

The way the rulers see it, 95 per cent of Russia’s newspapers, radio stations and TV channels are non-governmental, independent and self-sufficient. But experts – people who not only have skin contact with all types of media influence but are also able to soberly evaluate the content of media products – say the actual situation is not that simple, to put it mildly.

All of Russia’s TV media, including four national channels and 88 regional TV and radio companies, are state-controlled. Their policies are impacted not only by government financing but also by continuous, day-to-day impulses from the power vertical.

The power vertical in Russia strives to create a uniformity of perceptions of what is acceptable and what is not, of what this world looks like and what human life is. Those perceptions go vertically throughout the media, which are controlled by the State not only directly but also indirectly: via the appointed governors of constituent regions, territories and republics, and recently also via the newly-created substructure of appointed mayors and

heads of municipal administrations and, consequently, via the municipal media.

Another line of government influence goes through the private TV channels belonging to large and medium-sized businesses. The performance of these TV and radio companies directly serves the interests of their owners, who in turn are increasingly dependent on the Russian state power.

There is also a third component of state control of the media. The vast majority of TV companies make money by running commercial advertisements. However, one should not be deceived by the rapid growth of Russia's advertising market, with a turnover of more than five billion roubles a year, because the allocation of advertising budgets is closely supervised by government officials. The State plays an active role in this area, too.

Actually, the entire TV sector in Russia is controlled by the State. That is why the viewers in nearly all of Russia's territory see rather queer and often illusory portrayals of the nation's day-to-day life.

The ruling elite claims that direct instructions to TV companies from the presidential administration are a myth. But people working for TV channels have repeatedly confirmed in private conversations that the "telephone rule" continues to exist: they receive "high-level" phone calls, special press releases, and instructions on how to prioritize the news. The power system in Russia remains essentially bureaucratic. The wide gap between the state apparatus and the rest of society is reflected in the content of television programmes.

As regards the image of Russia as presented on TV, it seems that this "virtual" Russia is inhabited largely by clever and decent politicians, good or bad gangsters and good or bad law enforcers, together with popular

broadcasters and familiar-faced cultural personalities. Very few ordinary people – particularly women and children – appear on the screen.

The focal points of “televised” Russia’s activities are Moscow and St. Petersburg. Portrayals of life outside the two megalopolises are scarce and unimpressive. The regions, with their residents, economic problems, culture, education, health care and social issues are presented either as an area of government activity or as a source of scandals or catastrophes.

Since strong-handed broadcasting policies leave no room for a diversity of national, ethnic or cultural concepts or views, one may well get the impression that by taking such strict control over everything, the State is indeed succeeding at last to secure its long-sought “victory”. Victory over whom, though, is not clear.

The newspaper sector’s influence has been diminishing in Russia, just as elsewhere in the world. Far fewer than half of the twenty-odd thousand officially registered newspapers are public and political publications serving as an electoral resource. The rest are would-be glossy magazines, specializing in advertising, real estate, pets, homesteads, land plots, etc. This type of information also features prominently in newspapers claiming the status of public and political papers. The majority of them are district newspapers with a circulation of 2,000 to 5,000, distributed mostly to long-time subscribers in the relevant localities. They can hardly be called news media, because most of them were established by district or municipal administrations, are registered as state or municipal enterprises and are financed from mayoral or district budgets. The degree of freedom and independence they enjoy is close to zero.

Generally speaking, the notion of freedom of expression is only nominally applicable to Russia. The situation is that of a zoo, with the media sitting in

cages and five or six specimens living in a natural reserve. None of them are totally free, none are outside the zoo.

Freedom of expression is a public agreement. Like the earth resting on three whales, it is supported by three fundamental pillars: laws, traditions, and professional habits and skills. The legislative basis for full-fledged freedom of expression is non-existent or at best insufficient in Russia. One cannot express oneself freely in a country where there is a law supporting journalists, but no law giving everyone unhindered access to the information that interests them.

There has never been a tradition of free expression in Russia. Even if the authorities had pooled their efforts with the general public during the 20 years of *perestroika* to foster such a tradition, this would not have sufficed to establish it. Traditions take a longer time to develop.

The habits and skills of Russian journalists, just like those of the readers, viewers and listeners, display rather contradictory features. On the one hand, the older generation, while having acquired some experience in the line of democratic reporting, is still burdened by the sinful heritage of Soviet times, when journalism boiled down to spreading propaganda, and mastering the trade meant being able to persuade everyone of something one did not believe in oneself. On the other hand, crowds of professionally incompetent people rushed into journalism when the number of media outlets mushroomed in the early 1990s. They had a good many ideas, but not even a grain of expertise in how to bring those ideas home to the public. Neither the former nor the latter group has ever experienced freedom of expression in practical terms.

In an environment such as this, the Foundation of which I am the president defends the right of people – first and foremost journalists – to what we deem to be the better part of freedom of expression, without being able to

pretend that it constitutes it fully. My organization is named appropriately: the Glasnost Defence Foundation. The way we see it, freedom of expression consists of two elements: on the one hand, of *glasnost* – openness – and, on the other, of society's ability to get the message – I mean, of public and non-governmental organizations' ability to react and respond to media reports and publications. In my country, we do have *glasnost*, but the second element is missing. That is why for us, freedom of expression is the distant horizon toward which the “turtle of *glasnost*” – our Foundation's symbol – is slowly crawling.

Censorship is triggered either by ideology or by fear. In the absence of a new and sufficiently defined ideology in Russia, the mechanism of fear has been geared in. Censorship has shifted to self-censorship, fuelled at different levels by the news media's fear for their financial future and by individual journalists' fear for their lives, their earnings and the future of their children.

Given the prevalence among all journalists of this under-the-skin feeling of apprehension, it takes only a few publicly significant events to create a climate of total fear. In the recent history of the Russian media, a number of such events has been staged by the ruling elite, providing clear and unambiguous hints as to how the media should behave. At the federal level, the NTV and TV-6 television channels have been liquidated; in the print media sector, the newspaper *Izvestia*'s editor-in-chief has been dismissed and the entire staff of the magazine *Itogy* has been fired. In a country already infected with fear and apprehension, measures of this kind automatically switch on the mechanism of self-censorship. More examples can be cited at the regional level. These include the closure of the newspapers *Gubernia* in Petrozavodsk and *Karelia* and *Dobriye Sosed*i in the Republic of Mariy El, and the incidents involving reporter Olga Kitova in the Belgorod Region and the military journalist Grigory Pasko in Vladivostok.

The State wants to see non-governmental organizations (NGOs) in cages, too. Thanks to international support, they are more or less independent. However, the State has started to create parallel forms of NGOs. In 2000, “governmental NGOs” began to be formed, including in the field of media. The ultimate ambition is to replace the Union of Journalists. The Union of Journalists is being submitted to serious attack, in particular economic attack, from the State these days.

A vivid example of the State’s pressure on NGOs is embodied by the fate of Internews Russia which in 2006 was forced to change its name to Educated Media Foundation, after 14 years of existence.¹ Ten thousand people have been educated by this organization so far. It is especially active at the local level. It has done a lot of good – that means a lot of harm. Strange country, where the more good you do, the more it seems to harm the State.

Previously, it was financed up to 80 per cent by American companies (such as Ford) and European foundations. More than five million dollars a year: a great budget for great activities.

The Organization’s director, Manana Aslamazyan, was arrested at the border for carrying €10,000 in cash and not declaring it, when the limit was US\$10,000 in cash. A criminal case was initiated against her for carrying “contraband”.

Four months later, all papers and computers were confiscated. The results of the investigation were never made public. Other accusations could still be levelled against her – that’s why we have to keep her in Paris.

¹ Under the new NGO law, foreign organizations have to be clearly distinguishable from Russian ones. Since Internews Russia might have been confused with or considered a local subsidiary of a foreign organization – Internews – it had to change its name.

In conclusion, let me share with you a quote from an analytical article written by one of Russia's best political scientists, Lilia Shevtsova, and published by the Carnegie Center in Moscow:

“Vladimir Putin has fulfilled his historic mission by completing the Yeltsin-initiated construction of a bureaucratic authoritarian system upholding Russia's old-time autocracy tradition – this time in a liberal-democratic cloak. Putin managed to plunge Russia into its past while building it into the present-day context by legitimizing state power on the basis of alien ideology. The question is how long the ruling class will be able to continue playing this game of illusion and letting society believe the whole thing is real.”²

I have only one thing to add to that. Putin and Medvedev are like two investigators in a case: one being rude, the other kind. I don't have much hope for the future.

² Lilia Shevtsova, “Putin's Legacy: How The Russian Elite Is Coping With Russia's Challenges” in: *Briefing Papers*, Volume 8, Issue 4 (Carnegie Moscow Centre, June, 2006).

Selected Cartoons

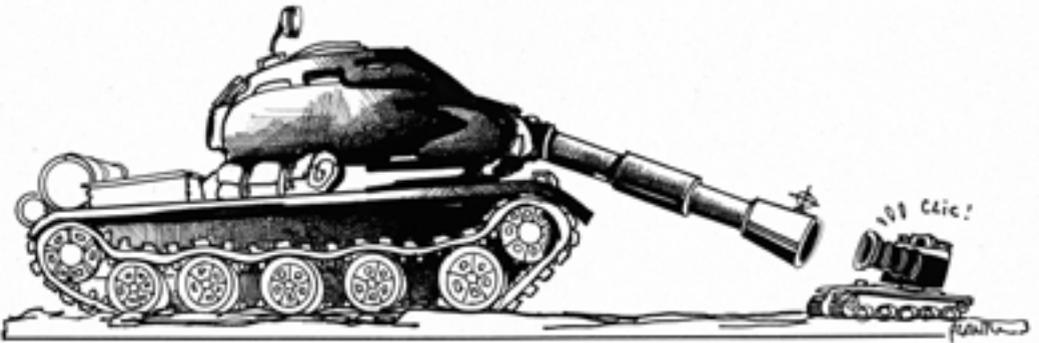


Courtesy of Plantu



Courtesy of Plantu

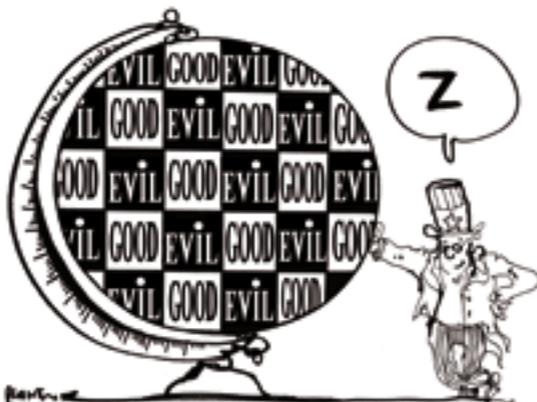
"See you Tuesday?" "Oh! I can't. It's Kippur"



Courtesy of Plantu



Courtesy of Plantu



Courtesy of Plantu

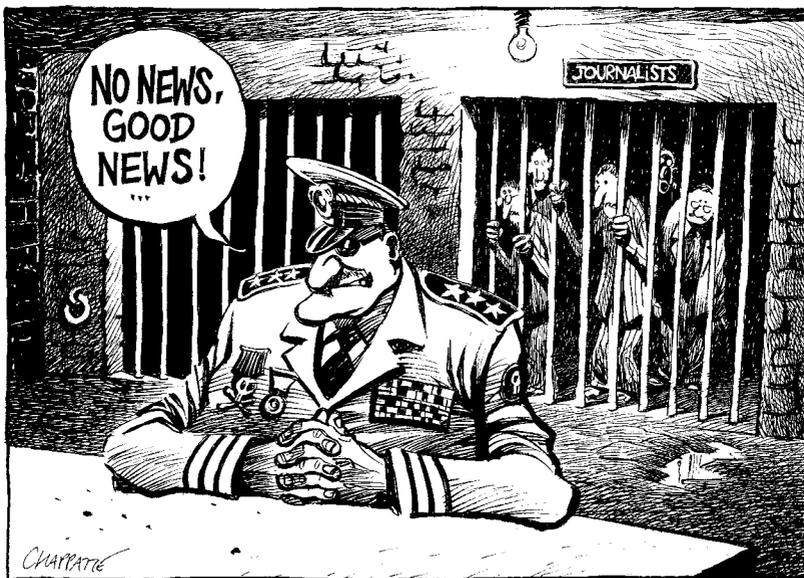




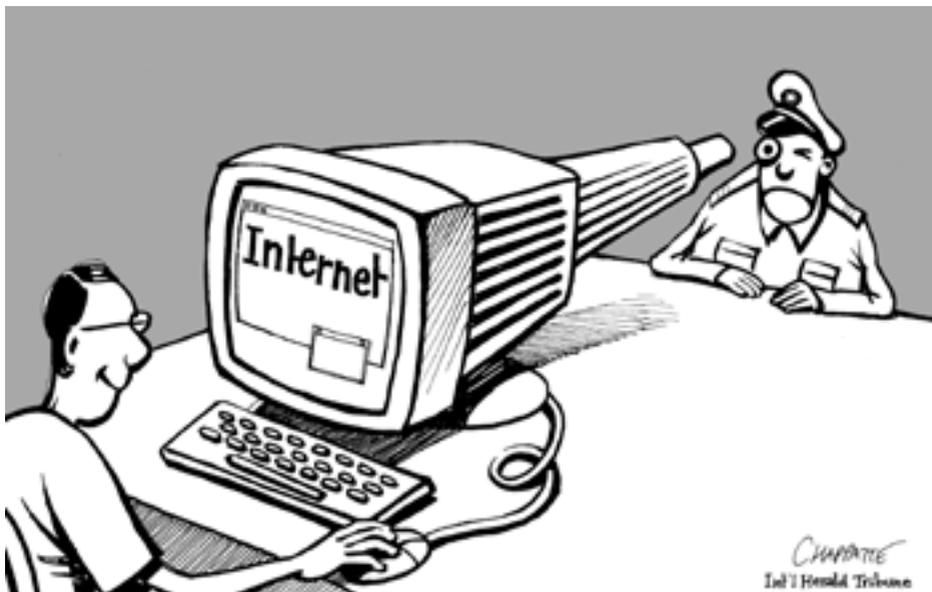
Courtesy of Chappatte



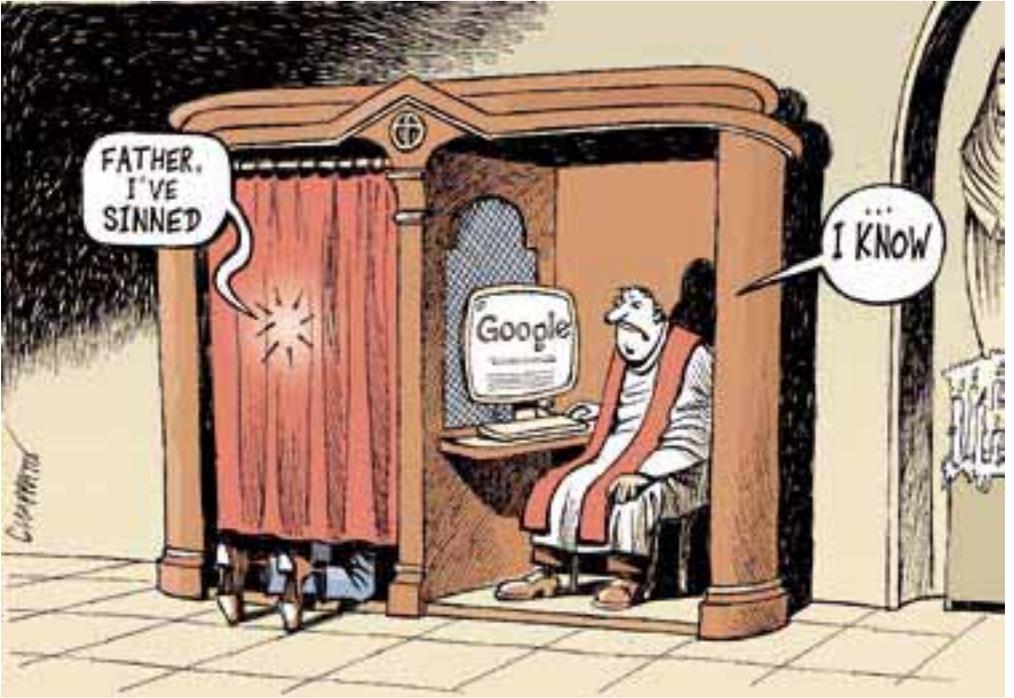
Courtesy of Chappatte



Courtesy of Chappatte



Courtesy of Chappatte



Courtesy of Chappatte

RFOM Contributions

Statement at the International Federation of Journalists World Congress

Miklós Haraszi

Moscow, World Trade Centre, 28 May 2007

In a recent report to the 56 Ambassadors present in the Permanent Council in Vienna, I provided a list of the gravest dangers looming for media freedom in the OSCE area. As **danger number one**, I named violence against journalists, and I added: “There is only one thing more intimidating for free speech than harassment, physical attacks, and murder of media workers, and that is when governments **tolerate** harassment, attacks, and murders.”

Obviously, every loss of life and violence suffered by journalists at work is tragic and a setback for the profession. But worse is aggression and murder as **punishment for exercising journalism**. It is a special war – a peacetime war on journalism. I would like to devote my contribution to the wonderful journalists, the Gongadzes, Husseynovs, Politkovskayas, Dinks, who have been falling victim to this special war in growing numbers.

Violence against journalists: why the gravest danger?

I believe that the targeted killing of journalists in peacetime, and especially the killing of journalists in revenge for critical coverage, is more dangerous than the other great sin against freedom of the press, unfortunately also quite common, which is a systemic lack of pluralism, undue governmental influence and the monopolization of mass media.

It is more dangerous for many reasons:

- First, when brutality is applied as a punishment for a journalist's work, then this is also a message, intended for colleagues, editors, media owners and all of their families.
- Violence begets censorship that goes far beyond the context of the actual controversy and compromises the most important task the press has to perform in defence of democracy. For it is mostly journalists covering **human rights abuses** and **corruption scandals** that are punished by use of force.
- The effects of the violence extend to the whole of society by deflating editors' willpower. In any democracy, editors are the ones who practically define which issues are reported and discussed.
- Finally, violence against journalists even becomes one of the forces commercializing the media. It adds the element of physical fear to the factors that today are pushing the media away from meaningful information towards empty entertainment.

What can governments do about it?

As an intergovernmental watchdog, my duty is to ask governments if they have done everything in their power against this plague. Governments can do a lot because, wittingly or not, they are always accomplices in the recourse to violence, even if they are not the ones ordering the killing. I will name several grave governmental sins, root causes in the genesis and evolution of violence against journalists:

Impunity for assaults against journalists

As long as persons using violence against journalists can count on practical impunity, it is no exaggeration to claim that this indifference by the authorities encourages and perpetuates the crime. Even the best of detectives

can sometimes fail to find the perpetrators of a crime. But apathetic law enforcers give the impression of sharing the motives of the offenders. Idleness in stopping violence kills hope. Otherwise, there would be enormous reserves for putting things right. In every generation, there are risk-taking, brave groups of journalists, especially young ones, who are enticed by the adventure of pursuing their profession to the full. But that adventure can happen only if the risks remain professional, legal or political. If quality and energy prove to be self-defeating notions because the system allows violence to seal quality's fate, hope for change is quickly aborted.

Of course, not all targeted murders of journalists are committed in retaliation for professional work. In April 2007, the Permanent Mission of the Russian Federation to the OSCE informed me that, out of the last eight cases which had prompted inquiries from my office, in five the perpetrators had been identified and in three sentences had been handed down. In most of these cases, however, the journalist's writing was not the likely murder motive. The two cases in which the journalist's writing was the likely "cause" of death were those of Anna Politkovskaya of *Novaya Gazeta*, and of Ivan Safronov of *Kommersant*. It is worth noting that these are the two cases in which little progress has been reported. In Safronov's case, the investigation was not opened for murder but for "incitement to suicide".

A further unpromising trend is that most cases are considered successfully solved as soon as the actual killers have been identified. Those who paid the bill, the *zakazchiki*, remain unknown. The clearly politically motivated cases as a rule presume impunity even for the perpetrators. The cases of Vladislav Listiev, Paul Klebnikov and Anna Politkovskaya in the Russian Federation are but the most well-known examples of many more in which there has been marginal or no progress. Russia does not stand alone here: "loud" cases elsewhere are also unlikely to yield satisfactory results, whether one speaks of Elmar Huseynov in Azerbaijan or Georgiy Gongadze in the Ukraine. The

investigation and trial for the murder of Hrant Dink in Turkey may be one notable exception.

Criminalization of journalism

Impunity does not start with the actual failure to successfully investigate and prosecute murders of journalists. It starts with the criminalization of journalistic offences, which is, in fact, the criminalization of journalism itself. Violence against journalists and official deprivation of their freedom are intricately linked. Before becoming plaintiffs in violence cases, journalists are defendants in criminal cases – for speech offences! State hostility and violence against journalists: street arrests, detention, criminal prosecution, and all for their reporting – are gateways to unofficial violence: threats, assault and murder.

This is more than clear from the most notable cases of journalists murdered in the last several years – those of Elmar Huseynov (2005), Anna Politkovskaya (2006) and Hrant Dink (2007). All were preceded by numerous criminal proceedings against these journalists at some point in their careers.

Criminalization of journalism is in effect the declaration of an open season on journalists. Take the case of Eynulla Fatullayev, the editor of *Realny Azerbaijan*. In September 2006, he received a suspended sentence for defaming the Interior Minister. Then he was sentenced to two years' imprisonment in May 2007 for "slandering a village" with his story about the Nagorno-Karabakh war. Since these proceedings, Fatullayev and his family members have been subjected to numerous threats and incidents of violence. And on the evening of his last trial this May, *Realny Azerbaijan* reporter Uzeyir Jafarov was almost beaten to death by people whom he had seen booing in the Fatullayev trial audience.

In the same South Caucasus region, data shows that since 2004, violence against journalists has virtually disappeared in Georgia and in Armenia. This is phenomenal, because in 2004, Georgia decriminalized libel and Armenia practically decriminalized it by abolishing prison sentences for it. Prior to these welcome reforms in state attitude towards speech offences, Georgia and Armenia had many cases of both prosecution of journalists and violence against them.

Sometimes, incarceration of journalists is represented as a “buffer” which could protect journalists against arbitrary popular violence. The opposite is true. The criminalized journalists are practically exposed as *vragi naroda*, enemies of the people. Governments cannot escape their responsibility for the attacks against them.

Discrimination against the independent press

As a rule, it is opposition, independent and investigative journalists, who, on the one hand, are victims of detention, imprisonment, fines and administrative harassment and, on the other, are liable to threats, assaults, kidnappings and murder.

We have to see that in most nations where violence against journalists is prevalent, there still exists a strong state-owned media sector. That would be no problem if it were only a transitory phenomenon on the road from a command economy to an open one. But the very States that tolerate violence against journalists (and practically instigate it by criminalizing journalism), are often also using the power of the State to discriminate against the fragile independent press and favour the state media.

Discrimination against non-state journalism is discernable in registration and licensing regimes, taxation, printing and distribution opportunities and the amount of advertising revenue earned from governments. No wonder

violence against journalists, too, primarily hits the independents, just as does the failure to successfully prosecute the murders.

Most victims have worked for the independent papers. I tend to see the whole conundrum of violence against journalist in the new democracies as a by-product of the protracted transition of media ownership from state property to civil property.

Democratizing media means handing the press over from government custody to the people, acknowledging that media is a civil endeavour and that the only job it leaves to government is self-restraint. I am afraid impunity with regard to violence against journalists is linked with the difficulty experienced by quite a few governments to embrace this cause.

Intolerance for coverage of demonstrations

The right to demonstrate is not only a right to free assembly; it is also a right to free speech. Violence against journalists is more likely to be met with impunity where unsanctioned demonstrations, even if peaceful, are met with violence, where the media that want to report on this are treated as part of the unsanctioned demonstration and where the officers responsible for the abuses are not prosecuted.

We all know about the mixture of criminal and extra-legal, often cruel actions that befell the journalists, Uzbek or foreign, who attempted to report on the demonstrations in Andijan in 2005. And we all heard the news of what happened in connection with the so-called “Marches of the Discontented” organized by an opposition alliance in Moscow, St. Petersburg and Nizhny Novgorod in the spring of 2007. None of the demonstrations were authorized, as the authorities did not allow the demonstrators to march along the requested routes. In each instance, several foreign and Russian

journalists were detained or beaten, some of them despite wearing a bright jacket identifying them as journalists.

Let's add that two Russian journalists from Estonia have reported receiving similarly hostile treatment from police while covering the protest marches this spring against the transfer of a war memorial. Tolerance towards known journalist-beating police is an attitude that can too easily go hand in hand with lenience on the part of the police towards unknown journalist-beating perpetrators.

Intolerance in the name of tolerance – mob violence against journalists

Finally, speaking of governmental responsibilities, I have to mention a fairly new and most dangerous trend in granting impunity to those threatening to journalists. Governments have a duty to defend journalists from threats and calls for violence, even if these are issued in the name of tolerance.

As you are all aware, what started in 2005 as an unprofessional, intra-cultural tongue-in-cheek provocation by the Danish newspaper *Jyllands-Posten* on the subject of the Prophet Mohammed has, since early 2006, become an inter-cultural clash on a horrifying scale. This clash has claimed lives and mobilized mass demonstrations against a perceived collective Danish – or European – desire to humiliate the whole of Islam through the press.

A year after the cartoons crisis, while free media worldwide have striven to increase their own cultural sensitivity, we have seen many lawsuits against caricaturists or writers for incitement, allegedly committed by depictions of religious subjects. In the Arab and predominantly Muslim countries, these trials have, as a rule, ended in convictions. There have been attempts to sharpen legal rules and practice in the OSCE area as well, but with a more varied result. In Russia, relevant cases have ended without convictions, partly because the press outlets in question have themselves ceased to operate

in the meantime. In Denmark and France, charged caricaturists have been acquitted, either on the prosecutorial or the court level. But in Belarus and Azerbaijan, such cases are still ongoing.

Again, we see criminalization leading to violence. First, authorities in an educational vein prosecute editorial mistakes which are likely to hurt some people's religious feelings, or which simply call into question conventional wisdom. The place for handling such statements is in self-regulatory discussions among the affected media workers.

But instead of cooling the flames, these criminal procedures only pour oil on them. This is because those who loudly demand the prosecution or even execution of the erring journalists are not friends of freedom of speech (and consequently, cannot be friends of true freedom of religion, either). In Denmark, death threats have been issued to two of the charged cartoonists, forcing them into hiding. *Jyllands-Posten* has also received several bomb threats.

At the same time, religious and political authorities have issued *fatwas* offering rewards for the murder of the *Jyllands-Posten* cartoonists. In Pakistan, prayer leader Mohammed Yousaf Qureshi announced that his mosque and religious school would give US\$25,000 and a car and that a local jewellers' association would give another US\$1 million. In India, a provincial minister called for the head of a cartoonist, offering US\$11.5 million and gold as a reward. In Afghanistan, an award of 100 kilograms of gold was promised by the Taliban.

On 4 May, two Azerbaijani journalists from the monthly newspaper *Senet* were sentenced to three and four years' imprisonment respectively, for "incitement to national, racial and religious hatred" allegedly contained in an article published in November 2006. The philosophical essay discussed European and Islamic values.

I called on the authorities to protect the two journalists instead of prosecuting them, noting that an Iranian ayatollah had issued a *fatwa* calling for the two to be killed. Domestic religious activists responded by starting an intimidation campaign against the journalists. Reportedly, they were allowed to shout death threats in the court room. I had to warn again that criminalization of journalists could unleash violence against media professionals, and, by surrendering to opponents of freedom of discussion, encourage extremism. While such publications may have offended the religious feelings of some readers, it is inadmissible to treat peaceful speech offences as criminal acts. Only actual incitement to violent ethnic or religious hatred should be criminalized. And a similar approach should also be taken with respect to actual incitement to violent hatred against journalists.

Fatwas calling for journalists to be killed should be made criminal acts. All nations should prosecute them and should ask for help from Interpol and other multilateral law enforcement agencies, if needed, to stop this potentially murderous “fashion trend”.

Recommendations

Governments obviously must adhere to the recent United Nations *Security Council Resolution No. 1738* condemning attacks against journalists.

I also consider *Resolution 1535* of the Parliamentary Assembly of the Council of Europe, on threats to the lives and freedom of expression of journalists, to be a very valuable instrument. Discussing this subject in the capital of the nation where most journalists are killed in peacetime, it is right and helpful for the International Federation of Journalists to ask all governments to do everything they can against the war on journalists.

This situation should be placed visibly high on national agendas. An unequivocal acknowledgement of the gravity of the situation, and an

unmistakable declaration of the aim to put it right, could do wonders. Investigations of cases of threatened or real violence against journalists should be conducted in a journalist-friendly manner. Setting up centres that deal exclusively with them seems to us to be a must. They could operate a special website listing the cases and tracking the progress made.

Governments must be aware of the inverse relationship between governmental respect for the media and the level of societal violence against it. Peaceful speech offences such as defamation, libel, and insult must be decriminalized; their handling should be transferred to the domain of civil law. Special provisions on the insult of officials, presidents, state institutions and symbols of the State should be abolished. Administrative discrimination against the independent, opposition, and investigative press should be stopped.

Governments will have done most of what is doable when they accept that the press is a civil society endeavour and are ready to walk the line from state to civil media, from monopoly to pluralism. Calls for violence against journalism, even if made as *fatwas*, under the disguise of demanding tolerance towards religions, should be vigorously refuted and criminalized.

The advertisement addiction; Answers to the crisis of public-service broadcasting

Miklós Haraszti

Public-service broadcasting (PSB) has played an indispensable role in Europe's "democracy maintenance" ever since the period between the two World Wars. The experience of totalitarian takeovers demonstrated the need for a constitutionally protected broadcasting infrastructure that was independent from both political and commercial interests, had the obligation to provide objective news reporting and was capable of doing so.

In the 1980s, privately-owned commercial radio and television came onto the scene in Western Europe as an addition to PSB. Ever since then, the co-existence of the two, the so-called *dual*, or *mixed*, *media system*, with its enhanced level of pluralism, has become one of the constitutive elements of a European-style democracy. This system is significantly different from the American media system, which is mostly commercial, or the purely state-controlled media systems in all communist and many third world countries. In the new democracies that emerged after 1989, the introduction of the dual system has become one of the milestones on "the way leading to Europe".

However, the public-service wing of the dual system is currently in crisis throughout Europe, especially in the post-1989 democracies.

In Western Europe, public-service broadcasting was introduced several decades before the emergence of commercial broadcasting and the tensions accompanying the dual system have been handled with relative efficiency. But in Eastern and Central Europe, public-service broadcasting started

heading towards its practical annihilation shortly after its inception. This is because in the new democracies, both arms of the dual system emerged only after the collapse of state-owned broadcasting. Both the transformation of communist-type state channels into PSB and the licensing of privately-owned commercial channels have taken place within the same short time period since 1989. This has typically resulted in the demise of the public-service arm of the newly established dual system.

The demise of the public-service broadcast media in the new democracies manifests itself in various crises: a political, a viewer-share, a programming, and a legitimacy crisis. Encapsulating and perpetuating all these troubles is the unstoppable downward spiral of their chronic financing crisis.

Public-service broadcasting's childhood illness: political favouritism

The calamity regarding PSB's political role is the most well known of its weaknesses, one that is even generally acknowledged. It consists of the fact that in countries with a relatively short democratic past, the freely elected governments passionately manoeuvre to keep the newly established public-service broadcasters under their political influence. Even where detailed and fair-minded media laws exist, public-service broadcasting falls prey to politics and loses its editorial independence.

There is no recipe for ensuring the political independence of public-service broadcasting by means of regulation – not in the absence of a consensual political will to do so. If the willingness to behave appropriately is missing either in the governmental or in the opposition parties, then the rules, especially the statutes regulating the composition of the boards, will be tortured and twisted by all sides in order to make the public-service broadcasters dependent in practice, often despite the spirit of the law.

PSB's constitutional role can eventually be restored if an element of consensus is achieved in public life. But besides favouritism, there are other serious crises affecting public-service broadcasting, all of which are caused by competition from the commercial sector. These crises are structural: in fact, they are crises of the dual system itself in its conventional form.

The many crises of the dual system

The dual system's current structure is based on a commercial competition between the commercial and the public-service wings, a condition that by definition spells the defeat of the latter. The commercial broadcasters "channel away" audiences from the public-service ones, and they continue to do so even if the governments periodically rush to the rescue of PSB with new financial injections.

Again and again, the need to compete for advertisement revenues throws the public-service broadcasters into a **viewer-share or rating crisis**. They continually adjust their **modus operandi** to the advertising market's main benchmark: the rating of the programmes by the viewers. But their commercialization has pre-set limits because of their public-service remit prescribed by law. These limits cause PSB to keep losing viewers and revenues to competitors not bound by them. The public-service channels then respond to these losses by further commercializing their programming, at the expense of their PSB duties. Duties which they can never shake off fully, as these are their official *raison d'être* and the source of the taxpayer-paid part of their revenues.

An example of this vicious circle can be the manipulations around the time limitation of advertising on PSB. The limit in most media laws is set to 6 minutes advertisement per hour, that is, 10 per cent of their broadcasting time is allowed for commercial messages. The commercial channels are allowed to spend 12 minutes per hour on pure advertising, that is, 20 per

cent of their time. Sensing their rating crisis, in many countries PSBs have convinced regulators to allow their 10 percent to be understood not on an hourly but on a daily basis. This allows them to concentrate the airing of their commercials during prime time, which obviously has to go hand in hand with filling their prime time with highly rated, popular programs. Unfortunately, the deal is typically much less successful financially than it is in further obliterating the programming boundaries.

In Central Europe, the audience share of the public-service channels that previously functioned as state channels has fallen from 100 per cent to below 20 per cent (and in many countries even below 10 per cent). Currently, we are seeing the development of this innate tendency to atrophy in the nascent public-service broadcasters in the Commonwealth of Independent States (CIS) countries.

The rating crisis leads to a **programming or identity crisis**. PSB channels lose their public-service character, become more and more similar to commercial broadcasters, epitomized by advertisement breaks and cheap, lowest-common-denominator programming. The viewers cannot distinguish any more between the programming offered by the public-service and the commercial wings. In the increasingly ruthless competition for viewers and advertisers, the public-service channels imitate commercial channels, but at the same time cannot keep up with their competitors. They turn into low-quality commercial channels, both in terms of programming and income. Thus, tragically, their public-service character is only recognizable by the fact that their news programmes, instead of providing the expected objectivity, serve as mouthpieces of political propaganda.

From this there ensues a **legitimacy crisis**. Most public-service channels obtain around half of their revenues from the taxpayer, either in the form of fees, or directly from the state budget. The taxpayers are obliged by law to pay for their PSB, supposedly in exchange for its public-service

programming. But as a result of PSB's growingly commercial programming, the promise of programming choice made to taxpayers remains unfulfilled. The viewers practically get only commercial programming, even on public-service channels. Sooner or later, the taxpayers get disenchanted, and so do their parliamentary representatives. The voters do not want to pay their dues to PSB, since it is just another commercial channel in their eyes, and one that they rarely watch. Parliamentarians who wish to be re-elected will sooner or later side with the feelings of their voters.

At this point, politicians are often ready to look the other way as their parties come to the rescue of PSB with new taxpayer-paid injections – in exchange for personal or editorial favours. This kind of “help”, being conditional, is always temporary, and therefore never sufficient. PSB's only way to escape is to renew its quest for commercial revenues, thus further weakening its programming identity, along with its legitimacy with the taxpayers.

A core innovation in Western European governance of PSB, **multiple-source financing, is also in critical shape**. The hope was that commercial revenues would complement the taxpayer-paid revenues (fees or budget allocations), while allowing PSB to remain independent from the governments setting the amount of the latter.

However, in the new democracies, revenue systems that are partly financed by taxpayers and partly through advertisements have resulted in constant losses.

Neither does multiple-source financing provide independence from any of these multiple sources. In fact, in the new democracies, it has pushed the public-service media into a state of constant dependence both on advertisers and on government “help”, opening the door to editorial blackmailing.

To demonstrate this with a joke: the idea of commercial revenues defending the independence of public-service broadcasting is like a doctor prescribing a drug against alcohol addiction, and ordering it to be taken dissolved in alcohol.

Nor is the fee-based financing usable anywhere outside Western Europe. I am aware that the fee became almost a symbol of media independence in Western Europe, and it supposedly creates a special bond of responsibility between the fee-paying citizen and the public-service media. However, let us face the fact that, in the new democracies, the fee is either impossible to collect or set so low that, even if collected, it is not sufficient.

The reason is that the average family income in the East does not allow for paying a fee that could cover the real costs of broadcasting. Because of this, the fee is politically impossible to collect. In the new democracies, instead of forming a unique relationship between fee payers and their public-service broadcaster, the fee turned out to have a provocative, alienating effect, acting almost as a call to civil disobedience, i.e. refusal to pay the fee. Thus, in these countries, the fee system only pushes the broadcaster towards advertising activities.

What reform?

All this, indeed, seems to amount to a crisis of the dual system itself. The commercial sector devours the public-service sector; the public-service branch tries to protect itself by imitating the other arm, accelerating its own demise. It seems that the dual system, by its very nature, is causing its own collapse.

But in fact, it is not the dual system that is the source of trouble, but the current methods of financing it: they do not make it self-sustaining.

The dual system can be made self-sustaining by reforming the relationship between public-service and commercial media.

In order to solve the crisis, it is necessary to apply only such financing models that guarantee the following results:

- They must re-open wide the so-called programming scissors, resulting in an independent and unique public-service programming sharply distinct from that of the commercial channels. (As we have witnessed, when public-service broadcasters are forced to earn revenues through advertising, their programming gradually turns commercial.)
- They must make not only the PSB but also the entire dual broadcasting system self-sustaining. In other words, as a result of the reform, the success of the commercial sector should no longer be a threat to the public-service sector.

Outsourcing advertisement revenues

Today, the dual system is ruining itself because any success enjoyed by the commercial channels potentially takes viewers away from the public-service channels. However, this trend can be reversed if ways are found to make the two systems feed, rather than starve, each other.

I call this method “the advertisement transfer” or “advertisement outsourcing”. It consists of declaring the public-service broadcaster free of advertisement activities, and thus offering the entire advertisement market to the commercial channels. In return, the commercial channels pay the public-service system a specified amount defined by law or by contract.

In other words, the public-service media outsource their own commercial activities to those best equipped to conduct them in the most professional way: the commercial broadcasters.

This will have further consequences:

If the re-financing ensured by the commercial channels is complemented by

an adequate taxpayers' fee or budget contribution, we arrive at a multiple-source financing method that is not pushing the public-service arm towards commercialism.

The other consequence is that the success of the commercial branch will strengthen the public-service broadcasting branch, instead of weakening it.

- Possible models for such a transfer arrangement for the financing of the dual broadcasting system include the original Finnish, the original Estonian, the British Channel 4, and the American C-Span systems. In Finland and Estonia, commercial channels originally paid dues to the advertisement-free public-service broadcasters; Channel 4 was originally established by commercial channels as a public broadcaster; and the C-Span public-service channel is operated by cable companies, which must ensure the maintenance of it in exchange for their licenses.
- Most recently, President Nicolas Sarkozy of France has proposed such a reform, albeit immediately running into resistance from the public-service broadcasting guild.

In each country, the “transfer” method should be made compatible with national laws and the constitution. The arrangement must be a veritable social contract, acceptable for all sides, and not a dictate. In Finland and in Estonia, for example, the otherwise well-functioning system was abandoned due to lawsuits filed by certain commercial channels unwilling to pay the transfer. Here are some of the reasons why I see such a reform as a forward-looking measure:

1) Firstly, it would enhance freedom of the media.

Far from depriving public-service broadcasting from the security and independence gained from multiple financing, the proposed solution would, in fact, maintain multiple sources of income for it. It would, practically speaking,

outsource all advertisement activities to the commercial broadcasting platforms in exchange for a redirection of a share of that revenue.

Besides, this funding reform would also increase the political independence of public-service broadcasting by diminishing the need for support from government.

2) Secondly, the reform would benefit not only PSB but also the commercial arm of the dual system.

The commercial channels would not have to face competition from public channels in the advertising market. This would allow them to plan their business more surely. At the same time, the growing number of platforms and channels would allow the contributions to public-service broadcasting to remain microscopically small, or “infinitesimal”, as President Sarkozy has put it.

3) A third group of advantages would consist in increased programming quality at public-service broadcasters.

Inevitably, the imperative to advertise has come with an imperative to commercialize programming. The proposed reform would clearly separate public-service programming from commercial, and allow PSB to return to its true vocation. It would give the viewers the joy of advertisement-free, quality cultural and political programming, and for that reason, it would also give an assured audience share to public-service broadcasters.

The upcoming digital era

The immanent convergence of all broadcasting platforms into digital ones will bring a multitude of channels, which could carry new dangers for the very existence of PSB, but, if well understood, also new opportunities for both de-commercialising and strengthening PSB.

Countless advertisement-based radio and television programmes will be offered on digital terrestrial, satellite, cable, internet, mobile phone, and many other yet unforeseeable distribution platforms. The danger lies in that this fragmentation of the audiences may make traditional advertising-aided PSB not feasible anymore. The difficulty might encourage regulators to wrongly think that central, nationwide PSB as such is not feasible any more. Already today, there are regulatory theories to “reform” PSB by discontinuing it as a separate institution, and tender out to commercial broadcasters the different parts of the public-service remit (such as news provision, parliamentary broadcasting, election coverage, minority representation, cultural and educational tasks, etc.). This would be a lethal mistake, since the ensuing situation would be the death of public-service broadcasting as a separate programming choice. The dissolution of PSB in commercialism would be final.

On the other hand, there are new prospects for PSB, too, in the coming abundance of channels. In case the so-called “advertisement transfer” method is accepted, there will be a large number of commercial channels and distribution networks present to share the burden, each having to pay only a small contribution to support public-service media.

Automating taxpayer-paid revenues

The de-commercialization reform could lead to greater independence for PSB only if it does not increase its dependence on fees or other taxpayer-paid revenues. The amount of these revenues is usually set by parliaments. Guaranteeing it for a longer period of time – in other words, automating it – would be a substantial contribution to PSB’s financial, and therefore political, independence.

Countries that are able and ready to finance their PSB entirely from taxpayers’ support can also de-commercialize their PSB. They can entirely

isolate PSB from the commercial branch as well as from commercial activities.

This can be carried out either purely through state financing or through fee collection. Both methods may be compatible with “automation”, and serve the purpose. It is advisable to study the Georgian law or the draft Latvian solutions:

- The essence of the Georgian model is that the state budget must spend on public-service broadcasting at least 0.15% of the gross domestic product (GDP).
- The draft Latvian law on audio and audiovisual media services envisages that state financing of public service broadcasters shall be 0.3% of the GDP.
- The British developed the principle of “advance commitment” of taxpayers’ payment; in other words, the law could determine the amount of support several years in advance. Although advance commitment was invented with regard to the fee, it can be applied for budget contributions as well. If the original yearly amount was right, and it is indexed against inflation, then this solution can be as good as the Georgian or the draft Latvian methods that are based on constant percentages of the GDP.

The three conditions of self-sufficient public-service media financing

- Regardless of whether the financing is multiple-source or single-source, the total yearly income must be sufficient to guarantee the proper functioning of the public-service broadcaster.
- Financing must be guaranteed for a couple of years in advance, in order to exclude yearly negotiations that can lead to editorial concessions and corruption and avoid exposure to the ups and downs of the markets.
- Financing must be indexed against inflation.

Neither a fee nor state budget support can ensure broadcasting independence unless it meets the above three conditions. However, either of them can become an adequate way of financing if it does meet the above three conditions.

Three myths standing in reform's way

- The most widespread myth is the belief that the independence of public-service broadcasting can only be guaranteed by partially relying on advertising revenues generated by the PBS itself, integrated into its programming goals.

In fact, there exist numerous examples of advertisement-free, successful, self-sufficient public-service financing systems, including older pages in the history of the BBC, C-Span in the United States, and the earlier Estonian model.

- Having a multiple-source income is also not an essential condition of independence.

Self-sufficiency can also be ensured by a single-source, non-commercial financing system. Great Britain, Sweden, and Norway prove the viability of this model.

- Furthermore, the belief that non-commercial income can only take the form of fees is also no more than a myth.

In fact, a single-source, direct state subsidy can be successful if adequate automating regulations apply. As examples of this one could cite the Georgian media law or the Latvian draft regulation.

Regular Report to the OSCE Permanent Council on the Danish cartoons controversy

Miklós Haraszti

Vienna, Hofburg, 16 February 2006

This is my first regular report in 2006. The structure of my report will be slightly amended in light of the recent events, the storm around the so-called “Danish cartoons”, and the need to reflect on what can be done in this situation.

I already issued a public statement on the subject two weeks ago, mainly with the aim of an early warning against hasty governmental infringement on the press, while suggesting mutual respect for traditions. On this occasion, I would like to explore the issues in more depth.

The “cartoons” controversy: The need for respect in freedom

As you are all aware, what started as an intra-cultural tongue-in-cheek provocation by a Danish newspaper on the subject of the Prophet Mohammed, has now become an inter-cultural clash on a horrifying scale. This clash has already claimed lives, and mobilized mass demonstrations and even some governments against perceived collective Danish, or European, desire to humiliate the whole of Islam.

An editorial judgement

We can now establish with some certainty the context of the original publication of the 12 cartoons. In the spirit of spreading inter-cultural

understanding inside Denmark, an illustrated children's book on the life of the Prophet Mohammed was to be published. However, the publisher couldn't find willing illustrators for the book. The editors of *Jyllands-Posten* were told that the reason was not a voluntary observance of the Islamic ban on depicting the Prophet, but physical fear. They saw this fear as a consequence of earlier intimidation by extremist Islamists in the wake of secular artistic representations of Islamic subjects, like the Salman Rushdie *fatwa*, or the Theo Van Gogh murder. They concluded that fear is jeopardising an important component of democratic culture, which is disregard for taboos, just at the moment when it matters. This is how *Jyllands-Posten* made the decision to ask for cartoons on the subject of the Prophet Mohammed, unquestionably knowing that it is scandalous for faithful Muslims. Nevertheless, this decision was made without any intent to express or incite religious hatred. If the cartoons were intended at all as a statement, then the statement was not about Islam, but about *Jyllands-Posten's* own readiness to uphold the critical tradition.

Actually, some of the cartoons were obviously meant to express the authors' critique vis-à-vis extremist misuse of the teachings of Islam. But that critique was made in a form that for most believers made it indistinguishable from a critique on Islam itself. This was so because the editors – in a misjudgement about how this critique would be read – employed no other means to illustrate their attitude towards free speech than the Islamic ban on depicting the Prophet Mohammed. They decided not to respect the sentiments of their Muslim readers, because setting aside cultural politeness was the very technique they chose for making a harsh endorsement of freedom.

Misinterpretations of an editorial judgement

Yet it was exactly the abandonment of cultural politeness that turned out to be decisive in the course of events. The editors "dared" to be disrespectful to Muslims not only because by publishing the cartoons they thought

they did not talk **about** Muslims, but also because they thought they did not talk **to** Muslims. That was – we can state this now with hindsight – another misjudgement, one of the current level of globalization. Their goal was misunderstood by good-willing Muslims around the world, and it was deliberately misinterpreted by ill-willed jihadist propagandists.

First, the cartoons were misinterpreted as a statement **on Islam as a whole**.

Second, they were misinterpreted as a statement **of hatred** towards Islam as a whole.

Third, they were misinterpreted as a statement of hatred towards Islam **by Denmark, its nation and its Government**.

These misinterpretations gathered strength, and were extended to encompass the whole of the ‘West’ when a number of papers in Europe republished the cartoons in an act of solidarity with the Voltairian gesture of *Jyllands-Posten*. The republishing papers, by the very act, went out of their way to emphasize that the reprinting was not meant in any sense as anti-Muslim. However, these assurances remained unrecognized, as did a similar statement from *Jyllands-Posten* apologizing for any hurt sentiments.

Unforgiving violence

By now, what started as an issue of editorial judgement has become, in many parts of the world, a question of life and death. A wave of unforgiving mass violence, for the moment at least, has succeeded in making a Huntingtonian point about the clash of civilizations. Images of burnt-down embassies of European nations suggest a profound cultural change in the world, a seemingly irreversible crystallization of two civilizations, and an almost Cold War-like divide between them.

The dignified joint statement by the Prime Ministers of Spain and Turkey, calling for calm and respect, speaks volumes about this potential rupture by reintroducing – for the first time since the Cold War – the concept of “peaceful co-existence”.

One of the immediate dangers created by misinterpretation and violence is that, at the moment, it is almost impossible to debate the issues freely. Our deliberations are taking place in an atmosphere of intimidation.

Therefore, we have to be particularly careful in making our conclusions and recommendations.

Immediate tasks and long-term considerations

In the short-term, while offering dialogue and co-operation, the context of fear should be rigorously opposed. Violence, especially state-endorsed violence, must be rejected. The actual aim of our short-term efforts must be the re-creation of a climate for a long-term constructive debate and cultural exchange.

The short-term methods may include the creation of channels to enable dialogue; clarification of misunderstandings; the bringing together of Western media (even the “cartoon-publishing” ones) with Muslim media; an assurance to the Muslim world of the respect of the papers and their home countries; and making it understood that the “cartoon” editorial decisions were entirely civil-society ones, neither asked for, nor endorsed, by governments.

It is perhaps necessary for governments to distance themselves from the publishers of the cartoons. But when doing so, concessions should not be made to demands – which are, unfortunately, central to many current protests and governmental demarches in the Muslim world – that

government leaders should take responsibility for the actions of the free press, or should even curb “their” media.

The debate should not pit freedom of speech against more respect and more care. Enhanced awareness of Muslim culture, and better responsiveness to global imperatives in editorial work, should come as an addendum to free speech, not as a restriction to it.

It should be made very clear that, universally, only a completely free press can be a responsible press. That commitment has a strategic importance for both the democratic world and the Muslim cultures, as well as for their rapprochement.

In order to find a solution, more than just respect towards Muslim traditions is essential. Dialogue should be shaped so that it also fosters respect in Muslim societies for the democratic traditions of other countries. It is not disrespectful to assume that separation of the State from the press, and from civil society (and perhaps even from religion) can become more accepted in Muslim cultures as well. It is not realistic to demand respect from editors of the free media for a lack of respect for editorial independence demonstrated by some Muslim governments today.

Promoting responsibility in freedom

My Office, while protecting the independence and pluralism and – importantly in the present situation – safety of the press, has always promoted media responsibility and quality, which are the main components of true tolerance.

We believe that the necessary growth in respect for other cultures does not require the passing of new legislation to regulate media activity. We have to have trust in the educational effect of what has happened. It is safe to predict that editors by themselves in the future will think more globally when acting

locally. But we also encourage press councils, those seasoned self regulatory ethics bodies of the quality media, to collect and summarize the wisdom of the press corps.

In European-type media landscapes, it is public broadcasters, funded by the tax payer, who are specifically tasked to promote mutual respect between cultures and to foster the heritage of both majorities and minorities. We will further encourage transformation of state broadcasters into independent centres for responsible public journalism in those places in the OSCE region where transformation is still pending.

We support the twinning inside the OSCE region, offered by the Belgian Chairmanship. We could assist by organizing editorial trainings, given by established public broadcasters to the newly transformed ones. The topic of enhanced cultural dialogue is apt for such twinning.

As we did in the case of Kosovo, we continue to monitor serious violations of intercultural responsibilities by the media, and assist with the formation mechanisms to promote self-regulatory ethics.

This year, we hope to explore new forms of training to support the institutionalization of press councils throughout the OSCE region. We are confident that the OSCE's skills in conflict prevention and resolution, and in fostering dialogue, will prove invaluable once again in the wake of the sad events of the past weeks.

My Office is ready to contribute to these activities. Just as it happened throughout the Helsinki process, dialogue with Muslim societies will also assist nations to develop mutual respect, both for values of culture and for values of free debate.

The cartoons saga and beyond

Arnaud Amouroux

The aim of this article is to provide elements of an informative nature, such as a basic chronology¹, to complement the “Regular Report to the OSCE Permanent Council on the Danish cartoons controversy” delivered by Miklós Haraszti in February 2006², and to report on the most recent developments in this controversy. It will also look at other instances in various parts of the world where controversial cartoons – and not only secular depictions of Islamic matters – have similarly sparked protests or reprisals, which could have the consequence of creating a climate of self-censorship among those who write on these issues. The Danish cartoons controversy may be unique as to its scale and violence, but it has scores of predecessors and successors.

CHRONOLOGY OF THE MOHAMMED CARTOONS CONTROVERSY

Debate about self-censorship

On 17 September 2005, the Danish newspaper *Politiken* ran an article with the headline “Profound Angst about Criticism of Islam”. The article was a report about the difficulties author Kare Bluitgen was experiencing in finding an illustrator for his children’s book on the Koran and the life of the Prophet. The day before, in a news agency story from *Ritzau*, it had been reported that three artists had declined Bluitgen’s invitation.

¹ On this, see the very well documented timeline provided by Wikipedia at <http://en.wikipedia.org/wiki/Timeline_of_the_Jyllands-Posten_Muhammad_cartoons_controversy>.

² See above, pp. 117 ff.

The refusal of these artists led to an intense debate in the Danish media about self-censorship and the fear of confronting Islam. The public debate reached *Jyllands-Posten*, where discussions were held on how to cover the matter. In the end, cultural editor Flemming Rose accepted the idea of writing to several cartoonists and asking if they would draw Mohammed. Forty cartoonists were approached and invited to draw Mohammed as they saw him. Twelve accepted the challenge – each producing a very different interpretation.

Publishing the cartoons: an editorial explanation

On 30 September, *Jyllands-Posten* published a feature entitled “The Face of Mohammed”. It consisted of twelve cartoons (of which most, but not all, depicted Mohammed) and an explanatory text, in which Flemming Rose commented:

“Some Muslims reject modern, secular society. They make demands for special treatment when they insist on special consideration for their religious feelings. That stance is irreconcilable with a secular democracy and freedom of expression where you have to be ready to accept insults, mockery and ridicule. It’s not always pleasant and nice to experience, and that doesn’t mean religious principles should be made fun of at all costs, but those considerations are secondary in this context [...] we are on our way to a slippery slope where no one can tell how self-censorship will end. That is why *Jyllands-Posten* has invited members of the Danish editorial cartoonists union to draw Mohammed as they see him. [...]”

Reactions, including judicial proceedings, in Denmark

During the first two weeks, the case was largely ignored by the Danish media. This changed when about 3,000 demonstrators gathered at Copenhagen’s central Town Hall Square on 14 October.

On 27 October, a number of Muslim organizations filed a complaint with the Danish police claiming that *Jyllands-Posten* had committed an offence under sections 140³ (also known as the “blasphemy law”) and 266b⁴ of the Danish criminal code.

In December, notwithstanding the judicial proceedings, two delegations of Danish imams travelled to Egypt and several countries in the Middle East. Shortly after, the issue was raised for the first time by the Organization of the Islamic Conference (OIC) at a gathering in Mecca.

On 6 January, the regional public prosecutor in Viborg decided to discontinue the investigation, stating that “there is not a reasonable suspicion that a criminal offence indictable by the State has been committed.”⁵

On 31 January, *Jyllands-Posten* published, in Danish and Arabic, the apology it had refused to give earlier.

Calls to boycott Danish products, violent demonstrations and storming of European embassies came to a peak during February 2006.

In the course of March and April, the demonstrations subsided, Danish diplomats returned to their posts and the boycotting eased off. Things

3 Section 140 of the Danish criminal code provides that any person who, in public, mocks or scorns the religious doctrines or acts of worship of any lawfully existing religious community in the country shall be liable to imprisonment for any term not exceeding four months. Since 1930, when it was introduced, only three prosecutions have been initiated for violation of this provision, and the most recent of these cases, in 1971, resulted in an acquittal.

4 Under section 266 b(1) of the Danish criminal code, any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, scorned or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.

5 In his decision, the regional public prosecutor also states that he attaches importance to the fact that the article in question concerns a subject of public interest, and that according to the Danish case law journalists have extended editorial freedom when it comes to subjects of public interest. On this, see: Response by the Danish Government to Letter of 24 November 2005 from UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène, at <<http://www.um.dk/NR/rdonlyres/00D9E6F7-32DC-4C5A-8E24-F0C96E813C06/0/060123final.pdf>>.

returned more or less to normal. But not for the 12 illustrators. They continue to live under police protection and are forced to maintain their anonymity, which is making it difficult for some of them to maintain a livelihood.

Reprinting of the newspapers elsewhere

At the outset, the Mohammed cartoons controversy was given only minor media attention outside of Denmark. Six cartoons were reprinted by the Egyptian newspaper *Al-Fagr* on 17 October along with an article strongly denouncing them, but this did not provoke any condemnations or other reactions from religious or government authorities.

In January and February, the cartoons were re-published by many outlets, primarily in Continental Europe.⁶ Notable for their abstinence were major newspapers in Canada, Israel, the United States and the United Kingdom, where editorials covered the story without including the cartoons themselves.

Media outlets and journalists in court

Several newspapers in the world were closed and a number of editors and journalists lost their jobs for republishing the cartoons, while others went to jail. To name just a few:

In **Belarus**, Alexander Zdvizhkov, editor of the *Zhoda* opposition newspaper was sentenced to three years in prison on 18 January 2008 for incitement of religious and national hatred under Article 130 of the Belarusian criminal code. The newspaper was shut down in March 2006 for planning to publish the cartoons, and remains shut to date. Zdvizhkov was released on

⁶ Sweden (*Expressen*, 7 January), Germany (*Die Welt*, 1 February) the Netherlands (*De Volkskrant*, 1 February), Italy (*La Stampa*, 1 February), France (*France Soir*, 1 February), Belgium (*Le Soir*, 2 February), Austria (*Der Standard*, 3 February).

22 February, after the Supreme Court reduced his sentence from three years to three months, the term he had already served.

In **Russia**, the weekly newspaper *Nash Region* published a collage of the cartoons on 15 February 2006 as part of an article examining the *Jyllands-Posten* cartoons controversy. The newspaper was closed shortly after by a decision of the owner, Mikhail Smirnov, to ease pressure from the authorities and avoid causing religious strife.

It was the first time the cartoons had appeared in a Russian paper, and prosecutors immediately opened an investigation into the conduct of the editor, Anna Smirnova, charging that she used her position to incite hatred. In April 2006, she was fined 100,000 roubles (approximately €3,000) and handed a two-year suspended sentence under Article 282 of the Russian criminal code on the incitement of national, racial or religious enmity. A month later, the Vologda Oblast Court, following a successful appeal by Anna Smirnova, overturned the decision and revoked the sentence.

Criminal proceedings were also stopped against *Gorodskie Vesti* (Volgograd), but for less felicitous reasons: the municipality publisher, News-Inform, decided to close the newspaper after charges were brought against it by the regional branch of the country's ruling party, United Russia. The editorial office moved to a newly created newspaper, *Volgogradskaya Gazeta*.

In **France**, the managing director of *France Soir*, Jacques Lefranc, was fired after reprinting the cartoons. In addition to the 12 original drawings, *France Soir* had printed a newly created cartoon on its front page, depicting Buddhist, Jewish, Muslim and Christian holy figures sitting on a cloud, with the caption "Don't worry Mohammed, we've all been caricatured here".

In March 2007, a French court ruled in favour of the satirical weekly newspaper *Charlie Hebdo*, which was facing charges brought against it by

two Muslim groups after it had published cartoons featuring the Prophet Mohammed in its 8 February 2006 issue. The charges accused the newspaper and its editor, Philippe Val, of “publicly abusing a group of people because of their religion.” This could have resulted in a six-month prison term for Val and a fine of €22,500 for the newspaper. The court acknowledged that one of the cartoons, which depicted Mohammed wearing a turban shaped like a bomb, might offend some Muslims. But it said that, given the context of its publication, it saw no “deliberate intention of directly and gratuitously offending the Muslim community.”

In **Jordan**, three of the cartoons were reprinted in the Jordanian weekly newspaper *Al-Shihan*. The editor, Jihad Momani, said he had published the cartoons to show readers “the extent of the Danish offence.”⁷ As a result, he was sacked, and later brought to justice under several charges, including blasphemy.

A never-ending crisis?

On 12 February 2008, Danish police arrested three men suspected of planning to assassinate Kurt Westergaard, the cartoonist who drew the “Bomb in the Turban” cartoon.

The next day, *Jyllands-Posten*, and many other Danish newspapers including *Politiken*,⁸ reprinted the cartoon as a statement of their commitment to freedom of speech.

On June 2, a powerful car bomb exploded outside the Danish embassy in Islamabad, killing at least six people, just weeks after an al-Qaeda leader

⁷ The presentation delivered by Jihad Momani at the OSCE Supplementary Human Dimension Meeting on Freedom of the Media on 13 and 14 July 2006 can be accessed at <http://www.osce.org/documents/odhr/2006/07/19903_en.pdf>.

⁸ The liberal newspaper *Politiken* had been critical of the original publication of the cartoons, but reprinted this one now as a gesture of solidarity in the face of a specific threat.

urged attacks against Denmark in response to the republication of the cartoons.⁹

OTHER CONTROVERSIAL CARICATURES IN THE PRESS

Bulgaria

In May 2006, ahead of the retrial of the Bulgarian nurses that had been sentenced to death in Libya in May 2004 on charges of intentionally infecting Libyan children with HIV, the Bulgarian newspaper *Novinar* published cartoons mocking Libya's justice system and leader Moammar Gadhafi. One of the twelve cartoons shows a woman in an Islamic veil with a condom over her head. In another, Gadhafi, holding a devil's trident, stands over a boiling cauldron with nurses' caps floating in it. A third shows Gadhafi calculating his next move over a chessboard with nurse-shaped chess pieces and barrels of oil.

The drawings met with a sharp response from Libya and raised concern about the retrial of the nurses. After *Novinar* published the cartoons on 3 May 2006, the Libyan Foreign Ministry summoned the Bulgarian ambassador and warned that such provocations could have consequences.

Iran

In Iran, a controversy that became known as the “cockroach cartoon controversy” arose over a cartoon published on 19 May 2006 in the government-owned newspaper *Iran*. The cartoon showed a boy saying the Persian word for cockroach in different ways. The bug, not understanding, replied “What?” in the Azeri language. The cartoon elicited mass protests,

⁹ An Internet posting purportedly by al-Qaeda in Afghanistan claimed two days later, on June 4, that the group was behind the bombing. The authenticity of the statement could not be independently verified.

and in the predominantly Azerbaijani-populated cities violent clashes erupted between the demonstrators and the police. After days of numerous protests, Iran's press supervisory board banned the state newspaper indefinitely. Cartoonist Mana Neyestani, an ethnic Azeri herself, and editor Mehrdad Qasemfar were both arrested. The newspaper later resumed its activities.

Spain

In November 2007, Guillermo Torres, cartoonist at the satirical weekly *El Jueves*, and Manel Fontdevila, the magazine's editor, were found guilty of offending the royal family in a cartoon that had appeared on the front page of the magazine in July of that year, and fined €3,000 each. The cartoon depicted Crown Prince Felipe and his wife Letizia having sex. "Do you realise," says the Crown Prince in the cartoon, "if you get pregnant this will be the closest thing I've done to work in my whole life," referring to an announcement by the Government that it would pay Spanish couples for each new baby they had.

A judge said that Torres and Fontdevila "had vilified the crown in a most gratuitous and unnecessary way." According to the prosecutors, Prince Felipe and Letizia were portrayed in an "explicitly sexual posture". Slandering or defaming the Spanish royal family can carry a sentence of up to two years in prison.

Sweden

In July 2007, about one and a half years after the crisis provoked by the *Jyllands-Posten* Mohammed cartoons, a controversy arose over a series of provocative drawings by the Swedish artist Lars Vilks featuring Islam's Prophet with the body of a dog. In the cartoons, Vilks compares Mohammed to a "roundabout dog", referring to the homemade statues of dogs that are to be found at the centre of many of Sweden's traffic circles.

Two art galleries in Sweden refused to show the drawings, citing security concerns and fear of violence. The controversy drew international attention after the Örebro-based regional newspaper *Nerikes Allehanda* published one of the drawings on 18 August to illustrate an editorial on self-censorship and freedom of religion.

As with its Danish predecessors, the cartoon drew outrage from the Islamic world and started a debate about freedom of expression. However, fallout from the Vilks incident never reached Danish-cartoon proportions.

Turkey

After successfully suing the Turkish newspaper *Evrensel* in 2004 for portraying him as a horse being led by one of his advisors, Prime Minister Erdogan started to sue satirical magazines and newspapers on a regular basis.

As a response to the legal proceedings launched against cartoonist Musa Kart in 2005 for depicting Erdogan as a cat in the daily *Cumhuriyet*, the weekly satirical magazine *Penguen* devoted its 24 February front cover to drawings of Erdogan with the body of a camel, a frog, a monkey, a snake, a duck and an elephant, giving them the title “The World of Tayyips”.

The Prime Minister retaliated by filing a new lawsuit against the publishing house, claiming the pictures “attacked his individual rights” and demanding 40,000 Turkish new liras (YTL) – around €20,000 – in compensation for offending him. So far, neither these cases nor others that have followed have resulted in a sentence.¹⁰

¹⁰ On 14 February 2007, the Ankara 1st Civil Court of First Instance rejected his claim for 40,000 YTL compensation from the *Penguen* magazine for a cover depicting “The World of Tayyips”. On 18 April 2007, the Ankara 14th Civil Court of First Instance rejected his claim for 25,000 YTL compensation from cartoonist Mehmet Cagcag and *Leman* magazine for depicting him as a tick. On 24 May 2007, the 4th Legal Chamber of the Supreme Court of Appeals overturned the decree of the Ankara 8th Civil Court of First Instance, which had fined cartoonist Musa Kart of the *Cumhuriyet* newspaper 5,000 YTL for portraying the Prime Minister as a cat entangled in a ball of wool.

United Kingdom

On 27 January 2003, the British newspaper *The Independent* published a cartoon depicting the Israeli Prime Minister Ariel Sharon sitting among bombed houses eating a baby, while helicopters and tanks buzzed “Vote Sharon”. The cartoon was penned by Dave Brown after a raid by Israeli missiles on Gaza City. Critics saw in it a reference to the ancient “blood libel” according to which Jewish religious rituals required blood of non-Jewish babies. The artist explained that his depiction referred to Goya’s *Saturn Devouring His Children*. The cartoon was eventually selected as Cartoon of the Year by the United Kingdom’s Political Cartoon Society.

The Israeli embassy in London, with the backing of Sharon, filed a complaint with the Press Complaints Commission (PCC) in March, claiming the cartoon was anti-Semitic. The PCC reviewed the complaint under clause 13 of its editorial code of conduct, which outlaws discrimination, and rejected it. It said it was “reluctant to come to a decision that would in any way compromise the ability of newspapers to make critical or satirical comments about nations or governments through the use of cartoons.”

Legal review as instrument of change: the work of the RFOM in the sphere of legislative reform

Slava Shayman

In working to fulfill his mandate, the OSCE Representative on Freedom of the Media (RFOM) combines project activities, such as publishing specialized literature, organizing regional conferences and conducting training for media professionals, with activities which are not project-focused. Because of the mandate's emphasis on the function of early warning, non-project activities constitute a large proportion of the totality of activities carried out by the Office of the RFOM. This includes pursuing "quiet diplomacy" with governments through their foreign ministries, issuing statements and publishing reports on violations of media freedom in the participating States, and reviewing their legislation and draft legislation regulating the media. The following article outlines the work of the Representative in the sphere of legislative reform.

Typology and methodology

In carrying out a legal review of a participating State's legislation or draft legislation, the RFOM strives to ensure that it is in line with that State's OSCE commitments on media freedom. A review may be initiated by the RFOM, the government of a participating State or an OSCE field mission. Although the RFOM reserves the right to carry out a review without pre-approval by a participating State, he tends to co-ordinate the procedure with the government in question. In most cases, the RFOM informs the OSCE Permanent Council of the review and publicizes it by issuing a press release.

There are two kinds of legal reviews conducted: reports with generally applicable recommendations and reviews of specific legislation.

A review traditionally begins by referring to international standards of media freedom. Of relevance to the OSCE participating States are United Nations declarations, Council of Europe documents, the jurisprudence of the European Court of Human Rights and, of course, OSCE commitments adopted by the participating States. The review then continues with an analysis of the provisions of the law in question and their compliance with international standards. Finally, it concludes with specific recommendations for improving the reviewed legislative instrument from the point of view of media freedom.

Relevant mandate provisions

The mandate of the RFOM was adopted by the Permanent Council on 5 November 1997 and is the guiding document regulating the activities of his Office. Although it does not refer to legislative review specifically, this document includes a number of provisions that apply to legislative reform. It stipulates, for instance, that the RFOM shall “advocate and promote full compliance with OSCE principles” and “closely co-operate with the OSCE participating States” to this effect.

It is hardly possible to cite a better example of co-operation between the RFOM and participating States than the conduct of legal reviews. Traditionally, it is the government of a participating State, through its OSCE delegation in Vienna, which comes forward to request the RFOM to assess the media freedom implications of a specific law. In response, the RFOM suggests concrete measures of legislative reform in accordance with the OSCE commitments on freedom of the media.

By conducting reviews of draft legislation, the RFOM is also acting as an instrument of early warning as stipulated in his mandate. The recommendations for legislative reform provided in a legal review help to strengthen “the implementation of relevant OSCE principles and commitments”. By nature of their advisory authority, they serve as a means to “advocate and promote full compliance with OSCE principles and commitments regarding freedom of expression and free media”.

Ensuring compliance with OSCE commitments

The first OSCE commitments on freedom of expression, free flow of information and freedom of the media date back to the *Helsinki Final Act* of 1975. Since then, relevant decisions have been adopted at the Conference on Security and Co-operation (CSCE) meetings in Madrid, Vienna, Copenhagen and Moscow, at the CSCE and OSCE Summits in Paris, Helsinki, Budapest and Lisbon and at all but one of the OSCE Ministerial Councils held since 1999. The *acquis* guiding the activities of the RFOM currently include over 30 documents adopted by the participating States between 1975 and 2007.

The importance attributed by the OSCE to media legislation for ensuring freedom of the press has its roots in the Copenhagen and Moscow CSCE meetings, at which the participating States affirmed that “the exercise of [the right to freedom of expression] may be subject only to such restrictions as prescribed by law and are consistent with international standards.” This is in line with the basic principle of the European Court of Human Rights, which states that every infringement of the right to free expression – as well as of every other human right – must be regulated by law.

Meanwhile, a major function of the RFOM is to promote the conformity of OSCE participating States’ media legislation with their collectively adopted OSCE commitments in the relevant spheres, which include areas as

diverse as the protection of reputation, broadcasting pluralism, access to governmental information by journalists and freedom of the media on the Internet.

The participating States have also assigned specific tasks to the RFOM in the sphere of legislative reform. For instance, at the Bucharest Ministerial Council, they decided that the Representative “will co-operate in supporting, on request, the drafting of legislation on the prevention of the abuse of information technology for terrorist purposes, ensuring that such laws are consistent with commitments regarding freedom of expression and free flow of information.” Furthermore, references to the importance played by the rule of law are found in commitments signed by the participating States at the Ministerial Councils in Bucharest, Maastricht and Brussels.

Use of external expertise by the RFOM

Commonly referred to as the “media freedom watchdog”, the Office of the RFOM, the only inter-governmental institution in the sphere of media freedom, may, whenever required, take advantage of external expertise. This process is facilitated by the contacts the Representative and his staff maintain with regional and international experts in the fields of media policy and advocacy.

The partnership between the OSCE and non-governmental organizations (NGOs) has time and again been cited as one of the clear comparative advantages of the OSCE. The Organization continually emphasizes the importance of civil society participation in governmental decision-making. The Office of the RFOM, for its part, prides itself on building and solidifying enduring partnerships with civil society across the OSCE region. One indicator of its success in this sphere is that NGOs from 29 OSCE participating States took part in the Supplementary Human Dimension Meeting organized by the RFOM in 2006.

While the RFOM has the capacity to carry out legal reviews “in house”, it tends to commission NGOs or external experts to review draft statutory instruments or legislative amendments. There are several reasons why NGOs and academic professionals specializing in media freedom tend to be the best suited for carrying out legal reviews. First of all, they are highly specialized in particular areas of media law (media law being a complex, multi-faceted field). Secondly, they have years of experience in reviewing legislative instruments. Finally, media NGO experts and academics have the best hands-on knowledge of comparative legal provisions and international standards (such as, in addition to the OSCE body of commitments, the United Nations and Council of Europe standards). The NGO or expert receives sufficient creative room to carry out the review in competence and conscience. At the same time, the review process is guided and supervised by the RFOM at every stage.

In the past, some of the organizations and individuals commissioned to conduct legal reviews for the RFOM have been: Article 19 (London), the Media Law and Policy Institute (Moscow), Privacy International (London) and the highly acclaimed experts Dr. Karol Jakubowicz and Dr. Katrin Nyman-Metcalf.

A results-oriented approach

The Office of the RFOM takes pride in noting that its work in the sphere of legislative reform has been and continues to be a success. Based on an analysis conducted by the Office, the majority of legal reviews carried out between March 2004, the beginning of Miklós Haraszti’s tenure as the OSCE Representative on Freedom of the Media, and 2008 have yielded concrete results.

The Office carried out 46 legal reviews during this period, 38 of which were reviews of draft or adopted laws or amendments, and six of which were

special reports on OSCE-wide legislation, thematic position papers or analyses of best practices.

Twenty-three of the 38 reviews of draft or adopted laws or amendments resulted in concrete legislative change, leading to the subsequent introduction of improved laws, or prevented drafts or amendments harmful to media freedom from being passed. In nine cases, the government in question submitted new and improved legal drafts, on six occasions specific legal provisions were added or deleted as requested by the RFOM, and in eight instances the passage of restrictive laws or amendments was abandoned. Thus, in over 60 per cent of the cases reviewed by the RFOM, the participating State concerned followed some or all of the Representative's recommendations. In three cases, the Office is awaiting new developments in the legislative processes of the respective governments.

On numerous occasions, following a legal review, much-needed dialogue between a participating State and the Office of the Representative has been facilitated by the participation of an OSCE expert in a seminar or roundtable discussion with representatives of that State. In six cases, a special report or position paper prepared by the RFOM on OSCE-wide legal developments or best practices has served as a guide to the participating States.

The future of media freedom on the Internet

Christian Möller

The Internet has rapidly developed into an unprecedented infrastructure affecting many areas of our lives in all regions of the world. Originally set up by the United States Government-funded Advanced Research Projects Agency to enable computer networks to communicate, it has become the foundation for many businesses, although quite a few did not survive the burst of the dotcom bubble. Individual communication through e-mails and social networks, new forms of publishing such as blogging, podcasting and, increasingly, the distribution of audio-visual material online allow for the dissemination of media content outside of traditional publishing houses or broadcasters. The line separating the professional media from so-called “citizen journalism”, or the “blogosphere”, has become blurred.

It was in 2003 that the OSCE Representative on Freedom of the Media (RFOM) first started to explore the state of media freedom on the Internet and kicked off his first projects in this field. Since then, information and communication technologies have changed a lot, and the active involvement of international organizations, civil society and industry has increased remarkably.

The Council of Europe’s *Cybercrime Convention*, with its *Additional Protocol on Xenophobia and Racism Online*, or the European Union’s *e-Commerce Directive* are just two examples of international treaties that have been concluded on Internet use. The United Nations has held two World Summits on the Information Society (WSIS), the first in Geneva in 2003, and the second in Tunis in 2005. The Internet Governance Forum (IGF) evolved as

a follow-up to these meetings. Non-governmental organizations such as Reporters without Borders are running their own programmes in this area and publishing lists of enemies of freedom of expression online¹. Also, the industrial sector is getting increasingly involved in issues of privacy and Internet governance that lie beyond the realm of their core business.

On a national level, many governments have adopted laws and regulations on the use of the Internet, sometimes with the good intentions of protecting minors, fighting child pornography or combating hate speech, but sometimes also, unintentionally or not, going beyond these legitimate aims and hindering the free flow of online information across borders.

As is often stated, the Internet is an unprecedented medium for the free flow of information and exchange of ideas across frontiers. Even if there is a small amount of problematic or even illegal content online, it should be stressed that the benefits the Internet offers outweigh the dangers by far. Promoting these advantages and countering hate speech with more speech has been one of the objectives of the RFOM since he first became active in this field.

Guaranteeing media freedom online

The series of international Internet conferences convened by the RFOM in Amsterdam between 2003 and 2005 attracted international experts from governments and civil society and resulted in various policy recommendations. These include the 2003 *Amsterdam Recommendations on Freedom of the Media and the Internet*², the *Media Freedom Internet Cookbook*³ and the joint declaration of the RFOM and Reporters without Borders, “Guaranteeing Media Freedom on the Internet”,⁴ in 2005.

1 Reporters without Borders, List of Internet Enemies 2008 <http://www.rsf.org/article.php3?id_article=26086>.

2 See: <http://www.osce.org/documents/rfm/2003/06/215_en.pdf>.

3 OSCE Representative on Freedom of the Media, *Media Freedom Internet Cookbook* (Vienna, 2004); online at <<http://www.osce.org/item/13570.html>>.

4 See: <http://www.rsf.org/IMG/pdf/declaration_anglais.pdf>.

Whereas the *Media Freedom Internet Cookbook* offers “recipes” for guaranteeing media freedom online, the RFOM’s latest publication, *Governing the Internet: Freedom and Regulation in the OSCE Region*⁵ showcases examples of multi-stakeholder approaches to Internet governance. The concept of Internet governance is addressed from a number of different angles, and examples from different countries of the OSCE region show how different issues of Internet governance can be addressed by the stakeholders involved.

More recently, RFOM involvement in the field of media freedom on the Internet has taken the form of continued participation in the United Nations-led IGF. The Office has notably been active in the Dynamic Coalition on Freedom of Expression and Freedom of the Media Online established within the framework of the Forum.

Internet governance

The Internet has made speaking out easier than ever before. Coincidentally, Internet censorship is spreading rapidly, being practiced by about two dozen countries and applied to a wide range of online information and applications, according to research by the Open Net Initiative, a transatlantic group of academics.⁶ Repeated actions against free speech on the Internet in a number of countries – democracies as well as dictatorships – has provided a bitter reminder of the ease with which some regimes move to expurgate speech they disapprove of, dislike, or simply fear.

This has stimulated the RFOM to take a more detailed look at how the Internet is governed in the OSCE region. Clearly, Internet governance involves more than addressing technical issues such as software standards

⁵ OSCE Representative on Freedom of the Media, *Governing the Internet: Freedom and Regulation in the OSCE Region* (Vienna, 2007); online at <http://www.osce.org/fom/item_11_25667.html>.

⁶ Open Net Initiative, Filtering Map <<http://map.opennet.net/>>.

or the domain name system. It also concerns the cultural implications of the Internet, for instance its implications on fundamental human rights, such as the right to freedom of expression. The RFOM is uniquely positioned to question and assess Internet governance processes from this perspective.

The idea for the Internet Governance Forum (IGF) was born at the 2003 WSIS in Geneva. The *Geneva Declaration of Principles* affirmed that: “as an essential foundation of the Information Society, and as outlined in Article 19 of the *Universal Declaration of Human Rights*, everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.” The Forum was called into being two years later, following the WSIS in Tunis. Paragraph 72 of the 2005 *Tunis Agenda for the Information Society* invited the United Nations Secretary-General “in an open and inclusive process, to convene [...] a new forum for multi-stakeholder policy dialogue.”

The IGF does not have any oversight functions and does not replace any existing bodies or institutions. It is supported by a Secretariat, hosted by the United Nations Office at Geneva. The first meeting of the IGF was held in Athens in late 2006, the second meeting took place in Rio de Janeiro in 2007. The 2008 meeting will take place in Hyderabad, India. Additional instruments called Dynamic Coalitions, a new form of collaboration among all stakeholders, including governments, civil society, industry and academia, were formed at the Athens meeting. Like the IGF as a whole, these Coalitions cannot make any binding decisions.

In spite of, or perhaps as a result of not being able to adopt binding decisions, the IGF and its Dynamic Coalitions have managed to be very open and inclusive. The outcome of the IGF process remains to be seen, but its organizational form definitely represents a new model of policy-making on the international level and an experiment in international co-operation.

The open and inclusive discourse practised at the IGF reflects the history of Internet regulation as a whole. Even though the Internet can be traced back to a United States Government initiative, it developed in an academic and then increasingly commercial environment, to a large extent without governmental interference.

Standards for earlier more traditional means of electronic communication have been set by international governmental bodies: television frequencies and telephone numbers, for instance, are governed by national broadcasting authorities or international governmental bodies like the ITU. For the Internet, however, standards have usually been set by the online community or expert bodies with an open membership. The informal Internet Engineering Task Force (IETF), informal papers – so-called “Requests for Comments (RFC)” – and consensus building based on the principle of “rough consensus, running code” have all played a part in developing uniform standards and determining the technical advance of the Internet.

In the course of time, some of these informal processes have coagulated into more institutionalized entities. For example, the administration of the Internet domain name system, initially a one-man show called the Internet Assigned Numbers Authority (IANA), run by Jon Postel of the University of South California, is today managed by ICANN, the Internet Corporation for Assigned Names and Numbers, as agreed with the United States Department of Commerce (DOC).

Increasing attention has been paid to the question of whether the Internet, given its development outside a classical intergovernmental framework, needs governance at all, and, if yes, in what form. Do we need a formal governance structure or will informal means of governance – norms of behaviour established by the Internet community or by the software code itself – suffice?

As “code is law” – something of which we have all become aware since Lawrence Lessig’s book⁷ – the architecture of the Internet is not open per se. It can be designed and shaped at will by developers, but also according to the wishes of policy-makers around the world.

Any technical development of the Internet has commercial, cultural and social implications, including implications for the free flow of information, freedom of expression and freedom of the media online. It is not enough to demand “freedom” of Internet resources – the guarantee of freedom of expression should be built into both Internet regulation as well as technical standards. But for this, there is the need for all stakeholders to communicate in an open atmosphere and first to develop an understanding for the other parties’ interests.

Policy-makers often lack the expertise to deal with the more complex technical side of the Internet. On the other hand, developers have only recently been showing increased interest in the societal impacts of the standards they set.

Every stakeholder has a special competency. Governance is not the same as government, but, at the same time, governments should not be excluded from the process of Internet governance. They have important functions that cannot be fulfilled by other actors, for example guaranteeing independent

⁷ See: <<http://www.code-is-law.org>>

courts and due process of law, protecting human rights or antitrust authorities. On the other hand, many aspects of Internet governance should rather be left to civil society or the private sector, for example the technical administration of the net.

Often, Internet regulation by States, even if done with the best of intentions, restricts access to the content on the Internet and hinders the free flow of information. Filtering measures tend to be over-blocking and under-effective, as studies show.⁸ Government-set technical standards, including those with legitimate goals, like Digital Rights Management (DRM) or proprietary standards, tend to limit openness.

Internet governance is a work in progress. Whether or not another institutionalized body addressing all the different aspects of Internet governance will evolve from the IGF remains an open question. In any case, there is no apparent need for the establishment of additional formally institutionalized global Internet governance structures. A more pragmatic approach may be preferable, taking the form of an inclusive dialogue and a process of best practices and rough consensus among all the different actors. Open discussions and informal proposals such as requests for comments drafted by expert groups, possibly by different Dynamic Coalitions could turn out to be the most effective means of bringing together the expertise of all stakeholders in an inclusive way. And governments might have to learn that not everything needs to be regulated in a highly detailed manner, as long as it functions smoothly and to everybody's benefit.

Internet governance might develop into a new process of policy-making on a global scale, with the involvement of many different sectors, including not only governments, but also industry and civil society. These are all issues that

⁸ See also: Open Net Initiative, About Filtering <<http://opennet.net/about-filtering>>; Maximilian Dornseif, Government-mandated blocking of foreign web content, 22 July 2003 <<http://md.hudora.de/publications/200306-gi-blocking/200306-gi-blocking.pdf>>.

were addressed at the 2007 meeting of the IGF in Rio and will be discussed further at its 2008 meeting in India.

The RFOM has been implementing programmes to raise awareness and to guarantee media freedom online for years. Internet is an additional – and in some regions the only – source of media pluralism. The Representative advocates using the Internet's potential to preserve an open environment instead of restricting the free flow of information by means of excessive legislation or technical measures.

Corporate Social Responsibility and Media Freedom

Corporate Social Responsibility (CSR) and Corporate Citizenship (CC) are currently important topics of discussion in the global economic community. Originally developed to combat the use of child labour in the supply chain or to ensure sustainable foresting practices in the pulp and paper and printing industries, CSR has become an important topic in the realm of content publishing. Workshops on the CSR of Internet and telecom companies were held at the 2007 meeting of the IGF in Rio.

An increasing number of Internet users worldwide – and certainly in the OSCE region, which includes many of the world's most technologically advanced states – are making use of the so-called web 2.0 and posting user generated content (UGC). As a result, responsibility for content is shifting away from classical editors or editorial boards towards individual users and the Internet providers that host their content. The implications of this trend for journalistic self-regulation, media ethics, economic profit and CSR need to be addressed. It poses new challenges for content regulation in many fields, often directly related to media freedom, for instance in cases concerning hate speech or the misuse of hate speech regulation to silence dissenting voices.

Who is responsible for user generated content? As mentioned at the outset, commercial companies are increasingly assuming responsibility for online content to an extent that, while not contradicting their business interests, exceeds what is required by them. Questions of privacy, the retention of user data, data mining or UGC are opening up new fields for discussion in the industrial sector. By developing rules of behaviour in these areas, companies are acknowledging that acting ethically, while not necessarily increasing profits, is a condition of profitability, certainly in the face of an informed public and concerned customer. However, their activity stops short of meddling with media content, and rightly so.

Media ethics has traditionally been concerned with developing sets of rules or codes of ethics for professional journalists, not individual bloggers. The rules are typically directives to refrain from libel and to verify sources, or concern issues such as which pictures to publish and which not, what kind of text to print and what not. These rules are often subject to peer review, as opposed to legal remedy.

The human right to freedom of expression has generally been invoked to protect citizens from interference and censorship by the State. It does not guarantee the right to publish – which remains an editorial decision. And, at first sight, it does not apply to the private sector. It would seem that a contractual relationship between, let's say, an Internet service provider and the author of a homepage or blog hosted on its server has nothing to do with the right to freedom of expression.

Experience, however, shows that Internet companies more often than not are willing to take down content for allegations of copyright violations, hate speech or obscenity, and do not take a stance in protecting the right to

publish controversial but otherwise perfectly legal content. Many field studies done by human rights activists show this.⁹

As outlined above, no single stakeholder alone can cope with the challenges the Internet poses to society, and traditional legislation might not be the suitable answer, either. At the same time, the protection of the human right to freedom of expression and the decision whether content is illegal cannot be left to private companies.

The RFOM recommends that courts should deal with illegal content on the Internet. If content, although being considered harmful, problematic or obscene, is not found to be illegal by court ruling, it should stay on the web and Internet service providers or hosting providers should refrain from taking it down. At the same time, Internet companies should establish a practice of notice and takedown procedures upon request by customers or institutions.

This dilemma should be addressed in the interface between the fields of human rights, media ethics and corporate responsibility. Companies should be made aware that there is an ethical and human rights dimension to content decisions. At the same time, their legitimate business interests need to be respected.

Good practices to be developed might include: reflecting human rights concerns in company codes of conduct; establishing freedom of expression officers or ombudspersons; ensuring transparency of action, keeping customers informed and granting them a right to appeal; adopting a policy of a bias to non-interference; referring decisions on content to national courts; setting up cross-company networks for addressing freedom of expression issues and developing best practices.

⁹ See, for instance: The Register, How to kill a website with one e-mail <http://www.theregister.co.uk/2004/10/14/isp_takedown_study/>.

Congratulatory Statements

Statement by the Slovenian Presidency of the Council of the European Union

Vienna, 29 February 2008

On the occasion of the tenth anniversary of the establishment of the institution of the Representative on Freedom of the Media (RFOM), the European Union salutes the achievements of the institution and the two distinguished figures who have held the office, and underlines their important contribution to the promotion of freedom of expression and free media in the OSCE area. We reiterate our conviction that the freedom and independence of the media is a cornerstone of a democratic society and a vital component in the protection of all other freedoms and liberties. The relevant provisions of the *Helsinki Final Act* and the *Copenhagen Document* are more than ever pertinent to the participating States.

Constant observation is essential in order to safeguard media freedom and to ensure the respect of relevant OSCE commitments. The importance which the EU attaches to the work of the Representative on Freedom of the Media and his office is well-known. The impartial exercise of his functions throughout the OSCE area lends credibility to his recommendations. We welcome his attention to media freedom issues also within our own countries.

The EU is conscious of newly emerging challenges in the domain of preserving pluralism and media freedom, including the difficulties posed by heightened security concerns. We shall work with the Representative to address these issues in an OSCE context.

The EU urges all participating States to continue to assist the Representative on Freedom of the Media to monitor compliance with relevant commitments, including by considering favourably the acceptance of visits by the Representative, and by replying in an expeditious, substantive and constructive manner to his early warning interventions and to his recommendations. We also urge all participating States to take necessary measures to protect the fundamental right of journalists to pursue their professional calling free from the threat or the use of violence.

The EU calls upon all participating States to create an environment where the media can work freely, effectively and without fear, in line with their international obligations and commitments and under consideration of the new challenges posed inter alia by modern technology. We stand ready to assist all participating States to develop the necessary conditions for this.

The candidate countries Croatia* and the former Yugoslav Republic of Macedonia*, the countries of the *Stabilisation and Association Process* and potential candidate countries Montenegro and Serbia, the European Free Trade Association countries and members of the European Economic Area Iceland, Liechtenstein and Norway, as well as Ukraine, the Republic of Moldova and Armenia align themselves with this statement.

* Croatia and the Former Yugoslav Republic of Macedonia continue to be part of the *Stabilisation and Association Process*.

Statement by Secretary of State Pertti Torstila, Ministry for Foreign Affairs of Finland on behalf of the Finnish Chairmanship of the OSCE

Vienna, 29 February 2008

It is a great honour for me on behalf of the Finnish OSCE Chairmanship to address this seminar on the occasion of the tenth anniversary of the Representative on Freedom of the Media.

It is also a great pleasure for me personally to be back at the OSCE in Vienna, where I served in the early 1990s as the Permanent Representative of Finland to the OSCE and followed closely the significant steps taken to strengthen the participating States' commitments in the field of human rights and democratization. The decision in December 1997 to establish the Representative on Freedom of the Media was a logical step to support participating States in fulfilling their commitments.

In our Chairmanship programme for 2008, Finland stresses the importance of the freedoms of expression, assembly and association as fundamental freedoms that bear great value in themselves, but also as freedoms contributing to the fulfilment of human rights in general.

Often enjoyment of these fundamental freedoms reveals how closely they may be inter-linked and sometimes even interdependent. In this broader context, the right to freedom of expression and free, independent and pluralistic media is one of the essential components of a democratic society.

The Finnish OSCE Chairmanship gives it full support to the activities of the Media Representative Mr. Miklós Haraszti and his Office in providing early warning on violations of freedom of expression and in assisting participating States from Vancouver to Vladivostok in fulfilling their commitments. Finland calls on the participating States to reconfirm their commitments to freedoms of expression and media. We look forward to continued discussions among the participating States in this respect.

Journalists and other media professionals work often under difficult and many times also dangerous circumstances. Too many times, journalists are being harassed and attacked physically for carrying out their professional duties. The Finnish Chairmanship, for its part, will seek to ensure support for the invaluable work of these brave people, which they should be able to carry out freely, without fear for their own or their families' lives or personal freedom.

The age of digitalization allows information to be transferred in the blink of an eye around the globe. The Internet provides enormous potential for sharing rapidly information and enhancing cultural dialogue. It is at the same time a tool whereby reprehensible forms of expression such as hate speech and child pornography are easily distributed. It is important that governments work together with media professionals in order to, in a balanced manner, address these new challenges.

The limits of free expression and the right of media to take up controversial or provocative issues for debate are constantly put to the test in all corners of the OSCE area. At the international level, the complex combination of freedom of expression in relation to freedom of religion has again been subject to increased attention.

While freedom of expression is not an unlimited or absolute freedom, great caution should be exercised by governments in establishing restrictions on

this freedom. As far as possible, the media itself should be allowed to decide where to draw the line. Media self-regulation has proven to be an efficient tool to ensure media workers' professionalism, accuracy and adherence to ethical codes of conduct established by journalists' organizations while exercising their freedom of expression.

Finland encourages a dialogue on freedom of expression in the OSCE. At its best, a healthy and forward-looking debate covers various aspects of the freedom and is constructive, positively engaged and professionally inspired. It may also be sharply questioning, concretely problem-centred and genuinely challenging.

I congratulate Mr. Haraszti and his staff on the occasion of the tenth anniversary of their important Office. I would like to thank him and his predecessor Mr. Freimut Duve for their excellent contributions in making the Representative on Freedom of the Media one of the important supportive pillars of our Organization.

I look forward to the presentations by our distinguished panellists and the discussions to follow, which I trust will contribute further to the promotion of free expression in the OSCE area.

Thank you.

Statement by the Special Representative of the OSCE Parliamentary Assembly

Vienna, 29 February 2008

I did not take the floor this morning, because I had expected Freimut Duve, as our former most prominent PA activist on this issue, to cover the OSCE PA's work in the area. Since he could not do so, please allow me to say a few words, which might sound repetitive, but this is one's fate when speaking at the end.

Who could be more aware of the importance of the freedom of the media and of the freedom of speech than parliamentarians? The free exchange of opinions is what parliamentarians themselves practice on behalf of, and as representatives of, the citizens. I can tell you that they cherish this freedom. In providing a platform for extra-parliamentary dialogue and for the information of parliamentarians, the media are an indispensable tool for parliamentary work. Investigative journalism helps to establish transparency of state and private structures – all those inert and ever-growing bureaucracies, which often shy away from truly democratic transparency – and thus assists parliaments in their parliamentary oversight.

Both functions are essential for parliamentary work. Without them, parliaments run the danger of being reduced to bureaucratic structures.

This is why the OSCE PA has been and will always be a strong advocate of a vocal and operational role of the OSCE in the field. In fact, it is in no way coincidental that the former chairman of the OSCE PA's Third Committee, Freimut Duve, became the OSCE's first Media Representative. Nor is it

by chance that for years, the OSCE PA has awarded its media prize to outstanding journalists.

The Parliamentary Assembly is quite aware of the urgent need to raise safeguards for really free journalism, not only in a handful of countries, but all around the world. Such media freedom, correctly understood, must include a high degree of independence of journalistic work from business interests. As Miklós Haraszti said this morning, we unfortunately witness that in many places business interests come first and seem to be seen as superior to journalistic ethics. Also, too many journalists fall for the seduction that lies in getting easier access to information when accepting the offer to be embedded in governmental or commercial operations.

Another danger that the Parliamentary Assembly is aware of is the possible misuse of the enormous power of the media, especially in countries with ethnic tensions, where some media have a strong tendency towards inflammatory reporting. Together with the Representative on the Freedom of the Media, we are planning to look into these issues more in detail in certain regional contexts.

Against this background, what makes the task of preserving media freedom so difficult is exactly this inherent contradiction. We have to continuously study how our work can contribute to raising the awareness of the media about the responsibilities and basic journalistic ethical standards and refine our methods, without – and this is essential – in any way limiting freedom of speech and journalistic work. The Office of the Representative has always taken a clear stance on that: without freedom, all efforts to achieve a higher degree of journalistic responsibility are in vain. Most regulatory measures have a tendency to damage this vital component of a democratic society. But, as we have just heard from Thomas Hammarberg, it also works the other way around: journalists who respect the code of ethics contribute to strengthening the freedom of the media.

Like in many other issues of a similarly programmatic nature, the recipe can only lie in education. The Representative on the Freedom of the Media has always performed as a teacher in an admirable manner, and the Parliamentary Assembly encourages him to continue his efforts.

Congratulations!

Statement by the Delegation of the United States of America to the OSCE

Vienna, 13 March 2008

The Representative on Freedom of the Media has once again delivered a very informative, factually reliable and well-reasoned report. Two weeks ago, the OSCE observed the tenth anniversary of the office that Mr. Haraszti holds. The event took place here in this chamber, and panelists spoke who were media experts with first-hand experience throughout the OSCE region.

One of the panelists noted that some post-Soviet era countries seem to be competing among each other to create the worst possible conditions for independent journalism. Panelists also observed that the trend against media pluralism through government restrictions over broadcasting and by harassment of journalists is unfortunately on the rise, especially during election campaigns and at elections, as we could witness in the past months with sometimes even fatal results in a number of countries.

Surely we all understand by now that an essential element of any thriving democracy is free, robust, independent media. Sometimes this may be difficult or uncomfortable for governments. But, free and fair elections are predicated on an open atmosphere where candidates can express themselves, where they have access to the voters through mass media, and where a free press can provide the public with a richness of information, and diversity of perspectives that allow the electorate to make an informed choice.

Mr. Haraszti's report provides a wealth of details about specific cases and worrying trends. We should all be startled at what he characterizes as a

“meltdown of OSCE commitments.” He is not exaggerating when he calls it a meltdown.

We appreciate Mr. Haraszti’s determination, under adverse circumstances, to see to it that his Office persists as an advocate of freedom of expression for the members of the media and as an agent of change for promoting best practices and reform of media laws as a means to strengthen the groundwork of free expression.

In this regard, we found a ray of light in Mr. Haraszti’s report as well. His office is continuing to assist Kazakhstan in reforming the country’s media legislation. Fulfillment by Kazakhstan of its reform commitments made at last year’s Ministerial in Madrid is vital to preparing Kazakhstan for a successful 2010 Chairmanship of the OSCE. We look forward to reports of concrete progress.

Finally, we note the formation in Kyrgyzstan last month of the first independent media self-regulatory body in Central Asia. Kyrgyzstan journalists’ voluntary media complaints commission will seek to safeguard freedom of the press by providing an alternative to court proceedings and giving moral redress in cases of violation of ethics guidelines. We note that particularly self-regulation by media professionals has been a topic of Mr. Haraszti’s office for some time, and was the theme of last year’s Central Asia Media Conference in Dushanbe.

Well done, Mr. Haraszti.

Statement by the Delegation of Canada to the OSCE

Vienna, 13 March 2008

Canada welcomes the Representative on Freedom of the Media (RFOM), Mr. Miklós Haraszti, back to the Permanent Council. We thank him for his presentation of the detailed report of his Office's activities over the last year. We congratulate Mr. Haraszti and his staff on this milestone, the tenth anniversary of the creation of the position.

Canada's Governor General, the Right Honourable Michaëlle Jean, was a journalist for close to 20 years, prior to becoming our Head of State in 2005. Addressing members of the Canadian media in 2006, the Governor General recalled growing up in Haiti, during the Duvalier dictatorship, where "journalists were imprisoned or even murdered" and "any attempt to inform the public of the rampant abuse of power meant your own destruction." She went on to say that "in Haiti, I learned such valuable lessons about what journalism could embody. It was then, as I watched those women and men willing to risk everything in the name of justice and freedom, that I came to understand what journalism could be." She concluded that the role of the journalists and their responsibility to inform lie "at the very foundation of our democracy".

This truth is one that we have recognized for many years here at the OSCE. Participating States have committed themselves, repeatedly, to protecting the freedom of expression and the freedom of the media as fundamental human rights and essential elements of a free and open society and accountable systems of government.

However, the RFOM called our attention to what he sees as an increased tendency to question their OSCE commitments by some participating States. In some cases, governments will defend their actions as being “consistent with national law”. However, this should and cannot be the end of the discussion. Laws can be vague, open to interpretation, abused. National laws can also be contrary to international law, commitments or obligations. And this is where the RFOM can play a useful role, in pointing to these discrepancies between national laws and their application on the one hand, and OSCE commitments on the other, and in working with the concerned States to close the gap between national and international standards.

As the RFOM points out, some States also portray the activities of OSCE institutions as an “intrusion into internal affairs.” In this regard, we note that the RFOM’s mandate is quite a broad one, giving him the tools to work effectively so as to identify serious problems, bring them to light and seek to address them in a co-operative way with the State concerned. He has the mandate to observe situations, advocate implementation of commitments in the field of freedom of the media, establish direct contact with the relevant authorities and report to the Chairmanship-in-Office and the Permanent Council. In the process, he is entitled to collect and receive information from all bona fide sources and interested parties, including NGOs. Importantly, the RFOM’s mandate calls for providing support to the Office for Democratic Institutions and Human Rights (ODIHR) in assessing conditions for the functioning of free, independent and pluralistic media before, during and after elections. These are tools we have given him and that he is entitled to utilize. In our view, he is making good use of those tools.

We would like to underline a specific commitment we made in Copenhagen in 1990. This is to respect the right of everyone to seek and impart freely views and information on human rights and fundamental freedoms, including the right to disseminate and publish such views. This is a commitment the

implementation of which, under the prevailing circumstances in the OSCE area, warrants closer scrutiny.

Canada is strongly committed to the promotion of freedom of expression and freedom of the media, both at the OSCE and in other international bodies. For example, Canada is presenting before the UN Human Rights Council a resolution to renew the mandate of the UN Special Rapporteur on Freedom of Opinion and Expression.

The RFOM is indeed a unique institution, of which the OSCE can be proud. We fully support the active implementation of his mandate. We wish him and his team all the best as they carry on with their important work.

Press statement by the Austrian Federal Ministry for European and International Affairs

Vienna, 29 February 2008

“Freedom of expression should not be stifled by fear” – Foreign Minister Ursula Plassnik on the tenth anniversary of the OSCE Representative on Freedom of the Media

On the tenth anniversary of the establishment of the Vienna-based post of OSCE Representative on Freedom of the Media, Foreign Minister Ursula Plassnik congratulated Miklós Haraszti, Hungarian journalist and civil rights activist, on holding this office, paying tribute to him as a “tireless and often ‘difficult’ admonisher, speaking out – and rightly so – for the freedom of the spoken, printed and electronically disseminated word.”

The Foreign Minister referred to the challenge of defending media freedom throughout the entire OSCE area. “The numerous cases of journalists being threatened, arrested or murdered worldwide constitute a vivid, haunting reminder for the entire OSCE community of States. Victims like Hrant Dink (Turkey), Anna Politkovskaya (Russia) or the Kyrgyzstan journalist Alisher Saipov, who was murdered last October at just 26 years of age, are only a few examples. Austria and the European Union have not kept silent about these cases, but have vigorously called for their full investigation and the prevention of further attacks on media representatives. Freedom of expression must not be stifled by fear. No open and democratic society can exist without free and critical reporting by the media,” stated Plassnik.

In addition to the OSCE Representative on Freedom of the Media, the International Press Institute and its subsidiary, the South East Europe Media Organisation, are also based in Vienna – two further important establishments that are committed to media freedom at the international level.

Press statement by the International Press Institute (IPI)

Vienna, 29 February 2008

IPI congratulates the Office of the OSCE Representative on Freedom of the Media on the celebration of its tenth anniversary

In a 28 February letter to Miklós Haraszti, the OSCE Representative on Freedom of the Media (RFOM), the International Press Institute (IPI) expressed its congratulations and best wishes on the tenth anniversary of the Vienna, Austria-based Office of the OSCE Representative on Freedom of the Media.

“When, in early 1997, the OSCE asked IPI, among other non-governmental press freedom organizations, to participate in defining the mandate of the OSCE Representative on Freedom of the Media, IPI gratefully accepted the invitation,” IPI Director David Dudge said.

“IPI is pleased to see that, ten years later, the Office of the RFOM has become an established and highly respected institution”, Dudge said, noting that during the two terms of the first RFOM, Freimut Duve, and now, under Miklós Haraszti’s leadership, the Office of the RFOM has become the foremost institution dedicated to monitoring media developments in the 56 OSCE participating States and providing early warning on violations of press freedom in the region.

IPI looks forward to continued close co-operation in “pursuing our common goals of furthering and safeguarding freedom of the press,” Dudge added.

Contributors

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Arnaud Amouroux has been Project Officer at the Office of the OSCE Representative on Freedom of the Media since February 2004. He has been engaged in a number of activities to promote media freedom and monitor press violations in Western Balkans, Turkey and Southern Europe. He is also co-editor of several Internet-related publications. Amouroux has participated in election observation missions in Central Asia and the Caucasus. He holds a Master's degree in International Administration Law from the University of Pantheon-Sorbonne in Paris and a BA in Political Science from Toulouse's Institute for Political Studies.

Patrick Chappatte is the editorial cartoonist of the *International Herald Tribune* where he draws a twice-weekly cartoon. Chappatte also works for the daily *Le Temps*, in Geneva, and the Sunday edition of the *Neue Zürcher Zeitung*, in Zurich. His best cartoon books have been collected in the cartoon books *Globalized* (2007) and *Another World* (2004). Chappatte's cartoons can be found at www.globecartoon.com

Karin Clark has been chairing the International PEN Writers in Prison Committee in London since 2004. She was a member of the PEN Centre of German-speaking Writers Abroad, London, from 1979 to 2003. A member of German PEN since 1997, she served as its Vice President from 2000 to 2007 and was responsible for its work for persecuted writers. She has been representing German PEN within the International PEN Writers in Exile Network since 2000. Clark studied and taught German literature at the University of Cincinnati (MA/PhD – 1969/1975). From 1977 to 1990 in London and from then on in Köln/Germany, she has been working as a freelance writer, translator and editor.

Freimut Duve was the first OSCE Representative on Freedom of the Media, from 1997 to 2003. He has been a member of the German Social-Democratic Party (SDP) since 1966. He was political editor at *STERN* magazine from 1969 to 1970 and general editor of various book series at the *Rowohlt* publishing house from 1970 to 1988. From 1975 to 1980, Duve was Member of the German Parliament (constituency: City-State of Hamburg). He became a member of the Foreign Affairs Committee in 1987 and Special Representative of the German Parliament for Bosnia in 1995. In 1997, he received the Hannah Arendt Award for Political Thinking.

Konstanty Gebert is a Polish journalist and former democratic opposition activist. In the 1970s, he co-founded the Polish Council of Christians and Jews, the unofficial Jewish Flying University, and a white-collar trade union that soon merged with *Solidarnosc*. During the 1980s, Gebert became well-known as an editor and columnist in the underground press under the pen name of Dawid Warszawski, which he still uses. In 1989, he covered the roundtable talks between *Solidarnosc* and the government on the transition to democracy and joined the new independent daily *Gazeta Wyborcza*, where he works as columnist and international reporter. From 1992 to 1995 he covered the Bosnian war for *Gazeta*. He is co-founder of the Media Development Loan Fund, which supports free media world-wide. He has worked extensively with independent media in Russia, Ukraine and the Balkans. He has lectured in Poland and the United States, including at UC Berkeley. He is currently teaching at Grinnell College, Iowa. He is the author of eight books.

Thomas Hammarberg has been Commissioner for Human Rights at the Council of Europe in Strasbourg since 1 April 2006. After working as a journalist in Sweden between 1973 and 1979 (foreign editor for the daily *Expressen* and foreign correspondent for Swedish Broadcasting), he was Secretary General of Amnesty International from 1980 to 1986, Secretary General of the Swedish non-governmental organization Save the Children from 1986 to 1992, Ambassador of the Swedish Government

on Humanitarian Affairs from 1994 to 2002 and Secretary General of the Stockholm-based Olof Palme International Center from 2002 to 2005. From 2001 to 2003, Hammarberg acted as Regional Adviser for Europe, Central Asia and the Caucasus for the United Nations High Commissioner for Human Rights. Between 1996 and 2000, he was Kofi Annan's appointed representative (SRSG) for human rights in Cambodia.

Miklós Haraszti, a Hungarian writer, journalist and human rights advocate, has been OSCE Representative on Freedom of the Media since March 2004. Haraszti studied philosophy and literature at Budapest University. In 1976 he co-founded the Hungarian Democratic Opposition Movement and in 1980 he became editor of the samizdat periodical *Beszélő*. He was a blacklisted author (of *A Worker in a Worker's State*, among other books), and a participant in the 1989 Hungarian roundtable talks on the transition to free elections. He was Member of the Hungarian Parliament from 1990 to 1994. Haraszti has lectured on democratization and media politics at numerous universities in Hungary and in the United States.

Gus Hosein is an academic and a human rights advocate. He is Visiting Senior Fellow at the London School of Economics and Political Science, where he lectures and researches on technology policy and civil liberties. He is Senior Fellow at Privacy International in London, where he co-ordinates international research and campaigns. Finally, he is Visiting Scholar at the American Civil Liberties Union, advising on international technology and liberty issues. Hosein's most recent activities include working with Internet companies on consumer privacy issues, campaigning against the monitoring of international financial data flows and researching the development of enhanced border and travel surveillance. He is an advisor to non-governmental organizations around the world and has been a consultant for a variety of governmental and inter-governmental institutions.

Christian Möller was Project Officer at the Office of the OSCE Representative on Freedom of the Media from 2003 to 2008. He is co-editor of the RFOM

publications *Media Freedom Internet Cookbook* and *Internet Governance in the OSCE Region*. He is a co-founder of the Dynamic Coalition on Freedom of Expression and Freedom the Media on the Internet (FOE online) within the framework of the United Nations Internet Governance Forum (IGF). He holds an MA in Media Studies, German Language and Public Law from Christian Albrechts University, Kiel. He lives and works in Hamburg.

Reino Paasilinna is a Finnish politician and has been Member of the European Parliament since 1996. He is a member of the Social Democratic Party of Finland, and sits on the European Parliament's Committee on Industry, Research and Energy. He is also a substitute for the Committee on Culture and Education and a Vice-Chair of the delegation to the EU-Russia Parliamentary Co-operation Committee. Paasilinna worked as a TV journalist, director and editor from 1961 to 1974. He was a press secretary and adviser at the Finnish embassies in Moscow and Washington from 1974 to 1983. He was Director-General and Chairman of *Finnish Public Radio* from 1990 to 1994, Vice-Chairman of the European Broadcasting Union from 1992 to 1994 and Chairman of the board of governors of *Euronews* from 1992 to 1994.

Oleg Panfilov is currently Director of the Centre for Journalism in Extreme Situations (CJES) in Moscow. Born in Tajikistan, he worked as a columnist for the newspaper *Komsomolets Tadjikistana* and as a correspondent for the newspapers *Nezavisimaia Gazeta* (Russia) and *Gazeta Wyborzca* (Poland). Between 1995 and 1997, he served as deputy editor-in-chief for the magazine *Central Asia* (Sweden). In 1993 he became the Director of the Moscow bureau of the Committee to Protect Journalists (CPJ). From 1994 to February 2000, Panfilov headed the monitoring service at the Glasnost Defence Foundation. Between 1994 and 1997 he served as a human rights expert in UN-lead peace talks in Tajikistan. He received the Russian Union of Journalists' prize in 1995. He is the author of 27 books and 8 films.

Plantu (a pseudonym of Jean Plantureux) is a French editorial cartoonist. Since 1985 his cartoons have appeared on a daily basis on the front page

of *Le Monde*, and since 1991 they have appeared in the weekly news magazine *L'Express*. Plantu studied drawing at the Ecole de Saint-Luc in Brussels. In 2006, following the worldwide Prophet cartoons controversy, he decided to initiate a series of meetings for international news cartoonists called *Cartooning for Peace*. He has been awarded the Mumm prize for dark humour as well as the Spanish trophy of the Gat Perich prize, an international prize for caricaturists.

Firdevs Robinson is editor of the *BBC World Service, Central Asia and Caucasus Service*. In her long *BBC* career, she has worked as the senior producer for the *Turkish Service*, producer of the *World Service Religion* programmes, reported for *World Service English* and *Radio 4*. Firdevs was the *BBC* reporter in Ankara between 2000 and 2002. She travels widely in Central Asia, Caucasus and Turkey for programme-making.

Slava Shayman has been working as an Assistant at the Office of the OSCE Representative on Freedom of the Media since 2006. Prior to this, he worked with the Budapest-based Centre for Foreign Policy Studies, conducting research on issues of European security, and with the News Lab of the University of Wisconsin-Madison, assessing the role of the media during elections. Shayman holds a Masters of Law degree in Comparative Constitutional Law from Central European University and a BA in Political Science from the University of Wisconsin-Madison.

Alexei Simonov has been President of the Glasnost Defence Foundation, a press freedom lobby group based in Moscow, since its creation in 1991. Simonov also works as a columnist for the newspapers *Izvestia* and *Russian Courier*. Since May 2007, he has been teaching "Journalism in Russia" at several United States universities. Between 1995 and 2007, he held seminars on free speech in Russia, Belarus, Armenia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan and Georgia. He has been a member of the Russian Union of Journalists since 1992 and was its Vice President from 2002 to 2004.

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