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Report of OSCE-ODIHR activities on hate on the internet

Warsaw, October 2010

Background

Since 2003, the OSCE has acknowledged that hate crimes can be fuelled by racist, xenophobic, anti-Semitic and other hateful content on the Internet.¹ OSCE Ministerial Council Decision 9/09, adopted in Athens on 2 December 2009, tasked the ODIHR “to explore, in consultations with the participating States and in co-operation with relevant international organizations and civil society partners, the potential link between the use of the Internet and bias-motivated violence and the harm it causes as well as eventual practical steps to be taken”.² The following report is a summary of activities undertaken by ODIHR in order to fulfil this task.

Summary of the Warsaw meeting

ODIHR convened on 22 March 2010 in Warsaw, Poland, an expert meeting entitled *Incitement to Hatred vs. Freedom of Expression: Challenges of combating hate crimes motivated by hate on the Internet*. The aim of the meeting was to explore the inherent challenges in investigating and prosecuting hate crimes motivated by hate on the Internet. This meeting, the first OSCE meeting on this topic since 2004, generated considerable interest among various stakeholder groups and resulted in a high number of participants (97) from 31 participating States and one OSCE Partner for Co-operation. Participants included representatives of governments, international organizations, law enforcement, prosecution, civil society organizations and minority groups.³

This meeting addressed a wide range of issues related to hate on the internet. A number of participants pointed out that the specific character of the Internet posed serious challenges to any attempts to regulate content, particularly while respecting freedom of expression. Unlike traditional media, it is often very difficult to establish the identity of authors of the content available online. Material which originates in one country is copied, edited, and shared across national borders, and can be hosted in different countries, subject to different legislation.

The role of legislation in combating hate on the Internet was a theme addressed in several speeches and presentations. It was acknowledged that legislation should be followed and

¹ Maastricht Ministerial Council Decision 4/03 of 2 December 2003 on Tolerance and Non-discrimination, paragraph 8, http://www.osce.org/documents/mcs/2006/06/19330_en.pdf.

² Athens Ministerial Council Decision 9/09 of 2 December 2009 on Combating Hate Crimes, paragraph 12, http://www.osce.org/documents/cio/2009/12/41853_en.pdf.

³ A full list of participants can be found at the end of this report.

enforced. Some speakers stressed the need for more precise legal definitions and the need to monitor implementation of legislation

The issue of “hit lists” – lists of individuals with their personal details accompanied by open or suggestive calls for violence against them – was cited as a great concern by many participants. Several examples of such “hit lists” being used to incite or suggest physical attacks against opponents of organized hate groups or visible minorities were highlighted. Their purpose is often to intimidate and create fear and pressure to change attitudes or stop certain social or political activities. Bearing this in mind, some speakers suggested that participating States should balance the protection of individuals from violence and criminal intimidation against the principle of freedom of expression. These speakers contended that the protection of freedom of expression must be equal to, but not greater than, protection of individuals from harm. It was suggested that the link between the “hit lists” and real crimes must be investigated very seriously.

A related issue highlighted by many participants was the connection between manifestations of hate on the Internet and hate crimes in the real world. Although it is often difficult to prove such connections in criminal proceedings, several presenters illustrated this link through examples from a number of participating States. It was noted that the psychological influence of material on the Internet on youths was allegedly quite high.

Other participants pointed out that due to differing approaches to hate-inciting content on the Internet and diverse criteria among the OSCE participating States for defining the threshold between freedom of expression and criminal behaviour, the impact of criminal legislation is limited and that subsequently, legislation alone cannot adequately tackle the issue of hate on the Internet. Participants also discussed the problem of implementation of legislation. In this regard, the need for specialised training for law enforcement officials and prosecutors on Internet-related hate crime cases was mentioned. Several speakers mentioned that Internet Service Providers (ISPs) and Internet companies are indispensable in addressing this problem and recommended that ISPs and Internet companies should be involved in any future discussions on this topic.

Summary of the Amsterdam meeting

One out of the series of recommendations that emanated from the Warsaw meeting was the need for ODIHR to hold direct meetings with the representatives of the Internet industry in order to engage them in addressing the potential links between hate on the internet and hate crimes. Therefore, in the immediate aftermath of the Warsaw meeting, ODIHR convened a meeting with a number of ISP's and Microsoft legal representatives on May 10 in Amsterdam entitled "*The Role of the Internet industry in addressing hate on the Internet*". The main goal of this meeting was to engage the Internet industry in an open discussion on how to effectively respond to manifestations of hate on the Internet without curtailing freedom of expression. Consequently, it was hoped that the meeting could examine ways of increasing cooperation with the "Internet Industry" and to identify realistic, practical recommendations formulated with the involvement of major Internet companies for a variety of stakeholders.

Representatives of the Internet Industry present at the meeting stressed that the Internet industry is aware of the problem of online hate and is committed to addressing it accordingly. Consultation with the Industry and invitation to participate in a dialogue on this subject was welcomed and appreciated. However, it was also noted that the Internet industry is faced with three types of challenges in addressing the issue of hate on the Internet:

- technical (what is technically feasible and what is not, huge amount of data and content uploaded by users),
- legal (unclear definition of certain terms) and
- political (attention given to this issue, conflicting views on hate inciting content in various countries).

Currently, there is no consensus on what 'hateful' or 'objectionable' content actually means. Due to these limitations, it should not be left to the Internet industry alone to decide what is acceptable and what is not in terms of Internet content. The Industry needs clear guidelines based on national and international law. Since the definition of objectionable or inappropriate content is too vague and broad, a more precise definition would be needed in order to use such terminology in Terms of Service.

A number of participants acknowledged that freedom of speech is of paramount importance and the potential impact of any recommended measures upon the freedom of speech should be assessed carefully, while drafting recommendations addressing hate on the Internet. Participants agreed that there is no need to adopt new legislation regulating Internet content. What is needed is proper enforcement of the existing legislation and closer cooperation between different actors in the process of its implementation and enforcement.

Some participants noted that while substantive laws on Internet content existed at the national level, there are no laws on the international level applicable to hate on the Internet, since there is no international consensus on hate speech. It was noted that enforcement of laws related to any inappropriate or even illegal Internet content (such as child pornography, pirated software, audio-visual material or hate-inciting content) is very difficult and often ineffective. The procedures establishing the responsibility and roles of different actors involved in dealing with the content: Internet Service Providers (ISPs), Internet companies, law enforcement, NGOs, independents monitoring and complaints mechanisms, are as equally important as the legislation and definitions regarding Internet content. Therefore, due attention and diligence were recommended in this regard.

A number of participants pointed out that the dialogue between different actors involved in addressing the hate on the Internet - Law enforcement, Internet Industry, NGOs – should be further strengthened, since only through such dialogue can solution be identified. It was suggested to use existing fora and mechanisms more effectively to ensure full(er) participation of all stakeholders. Several speakers noted that the current level of cooperation among law enforcement agencies on the international level is not sufficient enough and needs to be enhanced. At the same time, the capacity and skills of national law enforcement agencies to handle cases related to “cyberhate” needs to be improved further. In order to enhance and institutionalize cooperation between law enforcement and the Internet industry, points of contact for Internet related issues and cybercrime should be created within national law enforcement agencies in participating States. The creation of specialized police units tasked with cybercrime, including hate on the Internet would also help to keep the cooperation between police and ISPs ongoing and institutionalize it.

Brussels meeting with Microsoft

In order to implement some of the recommendations identified at the two previous meetings, and to make use of the existing momentum on the issue of hate on the internet, a third meeting related to cyberhate was organized between the ODIHR and representatives of Microsoft on 23 September in Brussels. Microsoft representatives welcomed the opportunity to have a discussion and open dialogue with ODIHR on the issues of hate speech on the internet, hate crimes and to explore avenues for potential cooperation. Microsoft, as a global leader in the IT sector, is fully aware of its responsibility and is willing to address the issue of cyberhate and develop joint strategy and initiatives. Its representatives also stated that Microsoft has a long history of cooperation with law enforcement on *cybercrime* related issues and views ODIHR expertise and capacity building activities related to hate crimes as complementary to its own efforts and training activities for various parts of law enforcement.

The meeting resulted in identification of several potential areas for cooperation between ODIHR and Microsoft:

- Drafting of guidelines or compendium of best practices for Internet Service Providers on cyberhate by a joint working group
- Reflecting the issue of cyberhate in ODIHR's annual hate crimes report
- Conducting Joint training activities on several levels: Capacity-building of Microsoft staff on hate speech and hate on the internet, involvement of Microsoft representatives in development of training material on cyber crime and cyberhate and involvement of Microsoft experts in trainings organized by ODIHR for law enforcement – cybercrime and cyberhate component
- Organizing joint publicity events: Microsoft showed a keen interest in ODIHR's annual hate crimes report and suggested that they could "buzz" the launch of the report in November by using MS website and other network services. This could be repeated annually.
- Raising awareness on cyberhate and create buy-in by other ISPs using Microsoft contacts and position within the IT industry

The above mentioned meetings resulted in identification of the following comprehensive body of recommendations for various stakeholders:

Recommendations to Governments, International Organizations:

Freedom of Speech

- Ensure that the Internet continues to be an open and public forum for freedom of expression and free media;
- Ensure that laws prohibiting bias-motivated speech are not being enforced in a discriminatory or selective manner to impede or silence dissent, political criticism or alternative opinions.

Studies and analysis

- Conduct studies of the possible relationship between racist, xenophobic, and anti-Semitic speech on the Internet and the commission of bias-motivated crimes;
- Investigate the link between the existence of 'hit lists' on the Internet and the commission of hate crimes;
- Commission a study on the potential hate crime offenders, looking at different stages involved in planning and carrying out of hate crimes and the psychological aspects involved.

Education/Prevention

- Develop educational programmes and training materials for young people about bias-motivated expression on the Internet;
- Promote and support media literacy programmes, including technical and textual Internet literacy;
- Develop, test, analyze and broadly implement educational concepts against online hate speech;
- Increase parental awareness of widely available filtering software.

Legislation and Law enforcement

- Possibilities of the current legislation should be explored prior to recommending creation of new ones;
- The implementation and enforcement of existing legislation addressing 'cyberhate' should be strengthened;
- Vigorously investigate and fully prosecute criminal incitement to violence on the Internet by using existing legislation;
- Train investigators and prosecutors on how to address bias-motivated crimes on the Internet;

- Share information on successful training programmes as part of the exchange of best practices;
- Support specialization of law enforcement and prosecutors dealing with cybercrime and hate crimes;
- Strengthen and institutionalise the dialogue between law enforcement, Internet Industry and civil society on issues related to cyberhate;
- Enhance international law enforcement cooperation on cyberhate and cybercrime related issues;
- Participating States should create points of contact in the law enforcement agencies for Internet related issues to streamline cooperation and exchange of information;
- Explore the idea of setting up a trusted authority (such as independent judicial panel) tasked with taking decisions on the cases of 'objectionable' online content and issuing take down notices to Internet Service Providers.

Monitoring and complaints mechanisms

- Support self-regulatory and independent monitoring mechanisms collecting and sharing data and statistics on hate on the Internet.

Cooperation with other actors

- Involve Internet Service Providers and Internet companies in any future discussions on the topic of hate on the Internet;
- Develop cross-border exchanges of information and best practices of different countries and organizations;
- Build partnerships between national agencies, NGOs, governments and the Internet Industry in order to monitor incidents of hate on the Internet.

Recommendations to the Internet industry:

- Employ clear and comprehensive "Terms of Service" as a basis to take appropriate action against sites inciting hate;
- Encourage ISPs to inform parents on ways how they can exercise greater supervision of their children and protect them from viewing objectionable material on the Internet;
- Use and promote Industry codes of conduct, ethical guidelines and principles as a tool for addressing online hateful content;
- Develop and implement accessible, visible and transparent online complaints mechanisms supported by a robust system ensuring timely handling of complaints;
- Enhance mechanisms available to users of Internet sites to flag inappropriate content;
- Set up mechanisms which would enable users to moderate content of online communities they participate in;

- Explore the idea of harmonizing statutes dealing with objectionable or inappropriate content in the Terms of Service used by international Internet companies;
- Analyze the potential of using existing ethical policies to steer the response of Internet Industry to 'cyberhate'.

Recommendations to OSCE Institutions

- Evaluate existing empirical research, to identify the extent of hate material on the Internet, the impact of exposure to such hate material on young people and the materials' direct link to hate crimes;
- Facilitate States' agreement to find universally acceptable responses to reduce the harm caused by online hate material through;
 - The identification and dissemination of voluntary agreements between Internet providers and users that balance freedom of expression against the need to reduce harm;
 - Working with civil society to counter the negative narrative contained in hate inciting material;
 - Support NGO efforts addressing cyberhate in a tangible way;
 - The establishment of a network of 'Single Points of Contact' to share information between states where it indicates a risk of imminent violence in that State.

Recommendations for NGOs

- Increase efforts to monitor the Internet for hate inciting content and publicize their findings;
- Actively challenge hate material on the Internet;
- Lobby Internet Service Providers to implement Terms of Service including a clause on hate inciting material;
- Promote consumer awareness of which ISPs host hate speech and which do not, in order to allow consumers to make informed decisions.

List of Participants of 22 March meeting on *Incitement to Hatred vs. Freedom of Expression: Challenges of combating hate crimes motivated by hate on the Internet*

Speakers/Moderators:

1. Ms. Barbara BOSSERMAN, Advisor, Civil Rights Division at the U.S. Department of Justice, USA
2. Mr. Martin DRECHSLER, Member, Freiwillige Selbstkontrolle Multimedia-Diensteanbieter, Germany
3. Mr. Ronald EISSENS, Director, Magenta Foundation, Netherlands
4. Ms. Danuta GŁOWACKA-MAZUR, Director of the Department of Control, Complaints and Petitions, Ministry of Interior and Administration, Poland
5. Ms. Floriane HOHENBERG, Head, Tolerance and Non-Discrimination Department, ODIHR
6. Ms. Nasrin KHAN, Legal Expert, EUPOL COPPS, United Kingdom
7. Ambassador Janez LENARČIČ, Ambassador, Director of ODIHR
8. Mr. Nils MUIZNIEKS, Chair, European Commission against Racism and Intolerance (ECRI), Council of Europe
9. Ms. Ženet MUJIĆ, Senior Adviser, Office of the Representative of the Freedom of the Media, OSCE
10. Mr. Wim STIENEN, Public Prosecutor, Public Prosecutor's Office, Netherlands
11. Mr. Lukáš VILÍM, Police Officer, Police of the Czech Republic, Terrorism and Extremism Division, Czech Republic
12. Mr. Alexey ZHAFYAROV, Head of the Division of Supervision on Execution of Interethnic Affairs Legislation, General Prosecutor's Office of the Russian Federation

Participants:

13. Mr. Sayed ALY, Counter-Terrorism Officer, Action against Terrorism Unit, OSCE
14. Mr. Elmar AULER, Detective Chief Inspector, Federal Criminal Police Office (BKA), Germany
15. Mr. Osman BAJRAM, Volunteer, Association of Citizens Sumnal, The Former Yugoslav Republic of Macedonia
16. Mr. Andrew BAKER, Personal Representative of the OSCE Chairperson-in-Office on Combating anti-Semitism, USA
17. Mr. Boudris BELAID, Member, OMDH Moroccan Organization for Human Rights, Morocco
18. Ms. Debbie BENSINGER, Assistant Director of Legal Affairs, Anti-Defamation League, USA
19. Ms. Sonja BÖHME, Senior Programme Manager, Foundation "Remembrance, Responsibility and Future", Germany
20. Ms. Ilze BRANDS KEHRIS, Director, Latvian Centre for Human Rights, Latvia
21. Ms. Suzette BRONKHORST, Director, International Network Against Cyber Hate (INACH), Netherlands
22. Ms. Shenaz BUNGLAWALA, Vice Chair, Europe and International Affairs committee, Muslim Council of Britain, United Kingdom

23. Ms. Sarah BURTON, Lawyer, Secretariat of the European Commission against Racism and Intolerance (ECRI), Council of Europe
24. Mr. Maksym BUTKEVYCH, Project co-ordinator, Social Action Centre, Ukraine
25. Mr. Tuncay CAKMAK, Vice President, COJEP International, France
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27. Ms. Pervin CHAIROULA, Member, Western Thrace Minority University Graduates Association, Greece
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29. Ambassador Douglas DAVIDSON, Ambassador, United States Commission on Security and Cooperation in Europe, USA
30. Ms. Monique DE GROOT, First Secretary, Permanent Representation of the Kingdom of the Netherlands to the OSCE, Netherlands
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70. Mr. Tiberius Ilie MOLDOVAN, Chief Prosecutor of Service for International Cooperation, Prosecutor's Office attached to the High Court of Cassation and Justice, Romania
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73. Ms. Stefańska OLGA, Member Pagan Federation, Poland
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86. Mr. Mark TOWNSEND, Detective Sergeant, National Domestic Extremism Team, United Kingdom
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4. Suzette Bronkhorst, Secretary General, INACH, The Netherlands
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