



**HATE SPEECH CONFERENCE/PANEL OF DIPLOMATS**  
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- 1- The differing views between the US and most Western-European Countries as regards the limits of freedom of speech are not new
  - Principle of the absence of any limits on freedom of speech (first amendment) since the Congress cannot legislate in this field;
  - Guarantee of freedom of speech “within the framework of the law” (declaration of the rights of the man and of the citizen, 1789, Article 11): “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law”. In fact, the French law on the press of 1881 provides that printing and publishing are free while concurrently setting various limits associated with the right of others;
  - New limitations on freedom of speech: apology of crimes against humanity, provocation of acts of terrorism (e.g. British law on the glorification of terrorism), incitement to discrimination, hatred or violence against a person or a group of people on the grounds of their religion, ethnic origin or race;
  - Internet; responsibility of service providers granting access to contents in certain conditions (e.g. the Yahoo case with contradictory decisions by the French and American courts). According to a French tribunal acting upon request of a human right NGO, Yahoo had to bear responsibility for the content of a website selling prohibit neo-nazi material; then Yahoo got a contradictory court decision in the USA. In any case, Yahoo accepted to cooperate and suspend the concerned website;
  - Satellite TVs: Banning by France Al Manar, (a Lebanese Broadcasting TV Station run by the Hezbollah), retransmitted by EUTELSAT. Al Manar broadcasts antisemitic soap opera, TV games promoting suicide bombings and the killing of jews. Few days later, the US adopted the same measure but for different reasons (Hezbollah is listed as a terrorist organization);
  - The global and trans-border character of numerous media enhances the different legal approaches taken by the US and Europe (e.g. Yahoo case).
  
- 2- However, Europeans and Americans both support the principle of freedom of the press in the OSCE area
  - One of the principles of the Helsinki Decalogue;
  - Support for the activities of the Office on the freedom of the media;
  - Joint Assessment of threats against journalists, the independent press, and internet access in numerous OSCE countries;

3- Despite the differences in our approach to law, Europeans and Americans are seeking a common approach to the question of the coexistence of freedom of the press and the fight against intolerance

- The topic of the ‘role played by the media’ (negative /positive) in the fight against anti-Semitism, racism and all forms of discrimination topped the agenda at the OSCE conferences in Berlin, Paris, Brussels and Cordoba. The Paris Conference (June 2004) on the internet, racism and anti-Semitism made possible a real US-European debate on the problem of anti-Semitic and racist messages on the internet.

Despite the differences in legal approaches, consensus has come to light in some areas:

- Common attachment to freedom of the media and the internet. We have to make sure that there is no any abuse from countries less favourable to freedom of the media, which might be tempted to use the alibi of the fight against racism to limit internet access, or close down newspapers;
- Agreement to encourage the monitoring by the civil society of racist and anti-Semitic websites- e.g. the experience of the international network on cyber hate (INACH) which has established co-operation with the ODIHR (training NGOs to monitor in Central and Eastern European countries; aiming at establishing complaints bureaux about hate speech on the internet. Role of service providers (code of conduct; cooperation with human rights NGO and law enforcement agencies...);
- Agreement on action with regard to education and protection of children. The role of the school and of parents in informing them (and warning them) about racist websites;
- Law enforcement agencies should investigate and fully prosecute violence and criminal acts of violence motivated by racist, xenophobic, anti-Semitic or other related sites on the internet. One should notice that, in spite of the first amendment, there is a US jurisprudence that states that when there is a direct threat on persons or group of persons the author of these threatening messages could be sentenced;
- The specific issue of the terrorist use of internet has been dealt with in the OSCE: a workshop (last fall) discussed practical recommendations such as exchange of information and monitoring of terrorist messages, websites; intelligence, police and judiciary cooperation in this regard.

4- As to the controversial publication of the caricatures of the Prophet Mohammed, I have noticed similar reactions in Washington and Paris

- Attachment to freedom of the press / denunciation of violence against embassies and persons in certain Muslim countries;
- But also critical assessment of the publication of the caricatures. Governments should have free speech. As Haraszti puts it in his last report: “it is perhaps necessary for governments to distance themselves from the publishers of the cartoons”. It is exactly what the French government stated: French government said that it is not appropriate, nor accurate to associate Muslims or prophet Mohamed to terrorists. This bias message are contradictory to what the international community agreed upon when the UN Security Council stated in the aftermath of 9-11 that no specific religion should be considered as “terrorist”;
- Appeal to the “responsibility” of the media. Free speech doesn’t mean that media and journalists would not bear the responsibility of what they print or broadcast. In the French media, we have had a real debate between those who decided not to publish the cartoons (considered as bad taste, provocative..) or those who chose the opposite option; experience of press councils (UK), professional code of deontology;

- Promoting dialogue with the Muslim community both in Europe and with Muslim states; there is no clash of civilisation but a clash in respective knowledge of each other; there are gaps between the reactions of westerners and Muslims ; so that it a confidence building measure to promote exchanges of views, two-way street dialogue between :
  - ngo, journalists from Europe and Muslim states;
  - European governments and their national Muslim communities (French example of the Conseil Français du Culte Musulman);
  - European and Arab governments (Euro-Med framework, OSCE and its Mediterranean partners).

#### 5- Proposals to the OSCE

OSCE is unique in this debate free press / fight against intolerance because it has

- i. instruments :
  - an office for freedom of media;
  - an office for democratic institutions and human rights with a unit against intolerance and discriminations;
  - personal envoys on islamophobia, anti-Semitism and against other forms of intolerance.
- ii. commitments and standards : free press, freedom of religion, fight against tolerance
- iii. unique membership that includes Muslim countries and Muslim partners.

Because of this uniqueness, OSCE is well placed to try to set up sort of informal guidelines that would enlighten governments, civil societies on this free press / fight against intolerance apparent contradiction (it is an apparent contradiction because one could state that free press could be the best guarantor to knowledge and respect that “others” deserve).

So I would set a conclave where I would seclude the representative of the office for freedom of media, the director of the ODIHR and the three personal envoys against intolerance. They won't be allowed to go out before through a white smoke they would announce that they would agree upon such an informal guideline on free press/mutual respect compatibility.