



United States Mission to the OSCE

Session II: Responsibilities in the Framework of Freedom of Expression

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Supplemental Human Dimension Meeting on Freedom of Expression
Vienna
July 4, 2014

Thank you, Mr. Chairman.

The Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), as referenced in the Helsinki Final Act, form the international framework for freedom of expression for all individuals. The UDHR and ICCPR recognize this right can be exercised through any medium. Therefore the exercise of this right, and the state's obligations and commitments to ensure this right, apply online as they would offline. Fundamental freedoms, including freedom of expression, do not change with new technologies. Like all human rights, the right to freedom of expression inheres in the individual; it is not for governments to dole out or deny as they see fit.

It is, however, governments' *responsibility* to nurture and preserve an environment in which freedom of expression – as well as other fundamental freedoms – may be peacefully exercised by their citizens. The OSCE, an organization guided by a body of decisions and commitments agreed to by all participating States, provides a forum for working towards that aim.

The UN Human Rights Committee stated in its General Comment about ICCPR Article 19: “Free, uncensored and unhindered press or other media is essential in any society for the ensuring of freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. ... The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.”

How can governments act responsibly to protect freedom of expression? The claims of certain participating States notwithstanding, the international legal framework governing the fundamental freedom of expression was *not* intended to be a blueprint for governments broadly to restrict speech or regulate the media. On the contrary, it was built to protect the exercise of freedom of expression by all individuals, including members of the media, from undue interference by the State. Some participating States try to justify politically motivated, repressive actions by invoking spurious arguments in an unsuccessful effort to bypass the strict test set forth by Article 19(3) of the ICCPR.

According to Article 19(3), restrictions on freedom of expression must meet a strict test of justification: namely, that such restrictions are only such as are provided “by law” and “necessary.” In this vein, we offer a few recommendations to ensure participating States act responsibly and in accordance with international law and OSCE commitments in the limited situations where they may restrict speech. First, any restrictions must be prescribed by laws that are accessible, clear, and subject to the scrutiny of an independent judiciary. Second the restriction must be the least restrictive means for protecting governmental interests. Third, the restriction must be narrowly tailored to fulfill a legitimate government purpose, such as the protection of national security (e.g., countering dissemination of weapons-making instructions for terrorist purposes), public order, public health and morals (e.g., countering child pornography), and the rights and reputations of others (e.g., countering copyright infringement and libel).

So what can governments do when faced with offensive speech? In that regard we offer a number of recommendations. First, governments can speak out and condemn the hateful speech. Second, governments can ensure members of minorities and vulnerable groups can exercise their freedom of expression to counter the hateful speech and educate people. Third, the government can create an environment of tolerance by enforcing anti-discrimination laws and hate crimes laws. These steps taken together provide a path governments can take to counter offensive speech, meaning it is not necessary to restrict such speech.

Instead of a non-restrictive response as we recommend, we often encounter legislation that is overly broad and vague, open to abuse for political purposes, or lacking the judicial oversight of implementation by independent, impartial courts. We have cited moves that have had the potential to endanger freedom of expression in OSCE participating States, including Kyrgyzstan’s “False Accusation” amendment (PC, June 5), Russia’s restrictive laws on the Internet and blogging (PC, May 8), and moves by the government of Turkey to block access to social media sites (PC, March 27) – the latter of which, we are pleased to note, has been restored in accordance with court rulings – to name a few. We will continue to raise concerns at the Permanent Council, HDIM, and other OSCE fora, about legislation and/or government action that have the potential to undermine our shared commitments to freedom of expression.

We call upon all participating States to meet both the letter and spirit of their OSCE commitments to protect and promote the freedom of expression and freedom of the media, and to reject or repeal measures that do not meet the strict criteria of Article 19(3) and unnecessarily restrict freedom of expression through any medium.

Thank you.