

**OHCHR EXPERT WORKSHOP FOR EUROPE ON
“PROHIBITION OF NATIONAL, RACIAL OR RELIGIOUS HATRED”
(Vienna, 9-10 February 2011)**

AIM: To explore legislative patterns, judicial practices and different types of policies in relation to freedom of expression and incitement to hatred, discrimination, hostility or violence.

SCOPE: To effectively prohibit and prevent advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, with the objective of ultimately widening the policy options for the creation of more equal societies.

TERMINOLOGY: Racist discourse; hate discourse (speech); hate propaganda; hate crime; racial or religious vilification; incitement to racial or religious hatred; incitement to violence on racial or religious grounds; group vilification on racial or religious basis; defamation (of religions).

Contribution by and Speaking Notes of Ambassador Ömür Orhun

“Inter-cultural Dialogue, Media, Freedom of Expression, Mediation and Reconciliation”

INTRODUCTION

I would like to begin with a few remarks on human rights, which is a concept that is not easy to define. Moreover it has often been used rather loosely. Therefore, instead of trying to define human rights in an arbitrary fashion, it might be better to stress the underlying characteristics of human rights: Human rights are fundamental, universal and indivisible; they derive from the dignity and worth inherent in the human person. They are innate and comprise the whole life span; they are absolute; they cannot be given up or abandoned; and they are individual.

In this connection, two main necessities related to protection and promotion of human rights must be underlined:

- a) Firstly, a philosophical conceptualization of human rights is needed; that is to say we have to deal with human rights on an intellectual foundation.
- b) Secondly, we have to bring to the fore the ethical dimension of human rights and to combine this approach with human rights education.

As I see it, one of the highest achievements of mankind during the last fifty years has been recognition and acceptance of the necessity to protect and promote human rights. In that domain, we also have to evaluate the results of our collective endeavours.

Human rights are cherished universal values. Like threats to all cherished things, there are threats to human rights also; poverty and ignorance being the two main ones. Here again international cooperation comes to the foreground.

Not only human rights, but also democratic pluralism, rule of law, transparency and accountability are also universal values. Although these values are essentially universal, they are not applied universally. Therefore, one of our priority tasks should be to identify the roots of these values within our respective cultures and to promote their collective ownership.

INTER-CULTURAL DIALOGUE

I would now like to address the concept of dialogue, which is a most frequently used concept, but sometimes in an empty manner. The first condition for a successful dialogue is that we should be talking to each other, but not across each other. Inter-cultural and inter-religious dialogue, on the other hand, has often been defined as an open and respectful exchange of views between individuals and groups belonging to different cultures and/or religions that would lead to a deeper understanding of the other's perceptions. I for one believe that the objective should not be confined only to achieving a "deeper understanding", but the aim should be broader to include conflict prevention and de-escalation, combating prejudices and stereotypes in public and political discourse and facilitating coalition-building across diverse cultural and religious communities.

In this respect, what I would like to highlight first is the importance of promoting and facilitating inter-cultural and inter-religious dialogue and partnerships aimed at tolerance, mutual respect and understanding and freedom of thought, conscience, religion or belief at both the national and the international levels. I would also like to recall decisions of various international organizations whereby member countries decided, in implementing their commitments to promote tolerance and non-discrimination, to focus their activities on legislation, law enforcement, education, media, data collection, migration and integration, religious freedom, inter-cultural and inter-faith dialogue. On the other hand, through implementation-focused thematic meetings they aimed to underline the importance of human rights, fundamental freedoms and democratic institutions in creating a context for inter-cultural, inter-religious and inter-ethnic understanding. They also focused on the role of governments and civil society in promoting understanding with a view to ensuring inclusiveness, respect for diversity and freedom of thought, conscience, religion or belief.

At this stage, a brief word on what needs to be done might be appropriate:

- We must identify ways to use inter-cultural, inter-religious and inter-ethnic dialogue and civil society partnerships as a means to promote conflict prevention and de-escalation;
- We must also explore inter-cultural, inter-religious and inter-ethnic partnership and dialogue as a means to combat prejudice and stereotypes in public and political discourse;
- We must attempt to facilitate coalition building across diverse cultural and religious communities and civil society groups;
- Finally, we should identify the role of various actors in promoting inter-cultural, inter-religious and inter-ethnic understanding.

DIVERSITY AND TOLERANCE

Let me now move to diversity and tolerance. Many countries nowadays are facing the challenges of managing increasingly diverse and multi-cultural societies. The richness of such diversity encompasses religious, racial and cultural aspects, which sometimes lead to social conflicts and even social violence.

On the other hand, what we observe in the international scene is increasing polarization, especially along cultural and religious lines.

These two trends, as I see it, must be addressed in conjunction with each other.

Mutual respect to, and not only respect but also sensitivity and knowledge of other cultures and religions both at the home front and at the inter-state relations is a must. Cultural and convictional differences are a reality. This reality should not be designed in a divisive manner, but rather in an over-embracing fashion. In other words, isolation is no option.

However, the need for respect for diversity should not be used as an excuse for human rights violations or as an excuse for implementing human rights partially.

Tolerance, on the other hand, has been defined as the capacity for or as the practice of recognizing and respecting the practices and beliefs of others. In other words, tolerance is acceptance of differing views and fairness towards people who hold these differing views. Needless to say, acceptance of differing views does not necessarily entail identifying one's self with such views, but entails merely respecting them. In that regard, I would like to suggest that we should have a new look at the UNESCO definition of what tolerance means and what it does not mean.

In order to promote tolerance, I again believe an ethical and intellectual approach must be adopted. For that, a mutual and two-way understanding should be the starting point. (Here the key word is "mutual".) But understanding is not enough; there must also be knowledge.

What we should be seeking is not a call by a benevolent dictator or ruler to its subjects. What we have in front of us is two or more sides. In a contemporary and democratic society we cannot speak about concessions or favours by the majority to the minority.

What we should instead be seeking is respect and equal treatment and equal opportunities. In other words, new avenues must be found.

If we want to reach a consensus, on the other hand, some conditions must be met: Transparency and inclusivity comes as the first two “musts”. Additionally, our relationship(s) should be based on trust and equality of the members of the society. Everybody should be respected. To put it differently, a comprehensive strategy of interaction must be adopted.

MEDIA

We all know that ideologies can only be expounded through (or by means of) languages. “News”, and for that matter “commentaries/opinions”, on the other hand, generally are products of the dominant/prevaling discourse.

Such news and commentaries, which contain elements of the dominant ideology and discourse, can spread humanistic ideals, esthetic values, tolerance and respect to fellow human beings. They can also spread prejudice, bias, intolerance and even hatred related to races, ethnicities, religions, foreigners, in short related to “the other”, through mockery, or negative, degrading or blasphemous language.

They might also portray “the other” as a threat to national security, as a potential risk, and thus fuel more negative sentiments towards the other.

In this connection, I want to elaborate on the media discourse on Muslims and Islam, and representation of Muslims in Western countries.

During my tenure between 2004-2008 as the OSCE Personal Representative on Combating Intolerance and Discrimination against Muslims and within the scope of my activities in this field, one problem emerged at the forefront; namely the media discourse and representation about Islam in general and about Muslims in particular in the Western media.

This fact has also been reflected in the reports and publications of leading international human rights organizations.

When it comes to reporting on Muslim communities, the media is found to be overly selective, one sided, simplistic and clichéd. Muslims, on their part, feel overwhelmingly discriminated against, as a result of news stories and commentaries that portray a negative image of their culture and religion in the public consciousness. Unbalanced reporting also reinforces stereotypes and provides the reader with the impression that the entire Muslim community is prone to violence, abusive towards women, rigid and monolithic.

The same goes for identification of Muslims and Islam with terrorism. Even reliable media outlets use terms such as “Islamic terrorism”, whereas terrorism has no religion.

On the other hand, media reporting to the effect that Islamic way of life and Islam itself is a barrier before liberal democratic thought and that Islam represents a culture that cannot possibly achieve harmony with the modern world is another source of stigmatization felt by Muslims.

As the so-called cartoon crisis amply demonstrated, the problem before us is very complicated, has different aspects, and is not related solely to the freedom of expression or of the media.

There is no doubt that freedom of the media is among the basic prerequisites of truly democratic and civil societies.

However, as many prominent representatives of international organizations also stressed, both from an international and national legal point of view and also from a moral perspective, there are limits to the freedom of expression.

Indeed, the European Court of Human Rights, as reflected in many of its decisions, has established that incitement to hatred or incitement that would generate violence and blasphemous publications offending religious feelings is not permitted by the European Convention of Human Rights. (I will come back to the legal issues later on in more detail.)

On the other hand, from a moral point of view, leading statesmen of the West and of the East, as well as leaders of international organizations have clearly stated that the boundaries of freedom of expression have been crossed in the cartoons case.

Another dimension of the issue before us is the residual impact of Islamophobia that emerged especially in the wake of September 11. The unfortunate publications of the cartoons on top of the ongoing negative and biased media representation concerning Muslims and Islam have created an atmosphere of tension almost bounding to a polarization between the East and the West, and between the Islamic and Christian worlds as never witnessed before in recent decades.

I will now try to address the question of the relationship between media freedom and media responsibility.

I believe all concerned should appeal for moderation and restraint, both vis-à-vis exercising freedom of expression with due respect for religious and moral values of others and sensitivities of everybody; as well as vis-à-vis the reaction one would like to display in view of offensive gestures or discourse, by strongly underlining disapproval of violence.

We should also appeal for increased dialogue, understanding and respect, especially respect to “the other”.

Having said that let me stress that I am not suggesting an increase in the governmental role in regulating the media. On the contrary, I believe the remedy should come from the media and from the journalists themselves.

In that context, I would simply refer to declarations and statements of the International Federation of Journalists (IFJ).

The 1998 IFJ Congress in its Resolution on Racism, Xenophobia and Intolerance noted with alarm the rise in racism and extremist political movements which try to manipulate media and agreed to promote joint action to enhance the role of the media in combating racism and to raise awareness among journalists of the danger of community conflict.

The IFJ Declaration of Principles on the Conduct of Journalists of March 2003, on the other hand, stated that the journalist shall be alert to the danger of discrimination being furthered by media, and shall do the utmost to avoid facilitating such discriminations based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national and social origins.

Finally, through its Declaration dated 12 February 2006, the IFJ called for media on all sides to avoid actions that might provoke community tensions both at home and abroad, underlining that the controversy over a series of cartoons commissioned and published by a Danish newspaper are deeply offensive to many Muslims, and has opened up a professional divide over questions of free expression and cultural sensitivity. This Declaration went on to say that this is an ethical issue, which must be discussed, debated and resolved by journalists.

So, the way-out is obvious to me.

The media must act responsibly when dealing with inter-religious and cross-cultural issues. As many commentators and politicians underlined, self-regulatory ethical systems should be established, or if they exist, they should be strengthened.

I would like to end by referring to the recommendations of the civil society as reflected in the Summary of the OSCE/ODIHR Roundtable Meeting on the Representation of Muslims in Public Discourse, which I helped to organize on 9 May 2006 in Warsaw. These recommendations are the following:

1. Provide ongoing and regular training on how to report diversity-related issues in general and on Muslims and Islam in particular. Training and educational initiatives should be practical and comprehensive in scope, and targeted towards editors and practicing journalists, professors and students of journalism, and media standards bodies.

2. Take positive steps to strengthen media bodies so that they have an increased capacity to assess and regulate media quality, and particularly to develop professional codes of conduct and ethical standards for dealing with religious and cultural issues, including the rights of minorities, and the avoidance of stereotypes and language that incites prejudice, hostility and tensions.

3. Promote dialogue and cooperation between media professionals and journalists of different cultures in order to promote intercultural understanding, raise awareness of different world views and personal subjectivity in reporting, and in order to promote an exchange of best practices in responsible, ethical and quality reporting.

I would finally also like to refer to EUMC's (now FRA) Equal Voices magazine dated June 2006, which contains quite a number of relevant articles on freedom of expression, media responsibility and hate speech. I would especially like to direct your attention to the Article 19's recommendations, including inter alia, designing and delivering media training programs, ensuring effective ethical self regulatory codes of conduct, taking measures to ensure that their workforce is diverse and representative of society as a whole, taking care to report factually and sensitively, and ensuring that a number of voices within communities are heard, rather than representing communities as a monolithic bloc. These are very sensible suggestions.

In conclusion, let me underline that the press and especially the mass media is a most powerful tool in shaping public opinion and perception. This powerful tool must be utilized with care and a sense of civic responsibility.

FREEDOM OF EXPRESSION

Further to my considerations on the media, I intend to dwell a bit more on the freedom of expression as it is the main theme of this workshop.

As I mentioned earlier, ideas, and words that convey these ideas, have power. That power can be used positively for the good of all, or negatively to undermine democracy, freedom and equality, and stability.

In that sense, hateful words and action also have the power to harm. They can isolate and marginalize certain people, not because of what they have done, but solely because of their personal characteristics, such as ethnicity, race, religion and the like. Moreover, hate is directed at people or groups that are already vulnerable, due to a history of intolerance, prejudice and discrimination.

There is no doubt that freedom of expression is a fundamental right in any democratic society. On the other hand, the right of all citizens to be treated with equality, dignity and respect, and to be protected from hate crimes is also an equally important fundamental right. Finding the appropriate balance between these rights is a challenge for every democratic society.

In that sense, freedom of expression is not a licence to hate. In other words, freedom of expression does not mean the right to vilify. Freedom of expression is also not sacrosanct.

It is an established norm that no right is absolute. The modern concept of rights is that different rights and freedoms should mutually reinforce each other to build a strong and durable human rights system. There is no hierarchy of rights, with some rights of more importance than others. Rights work together towards a common purpose.

In fact, 1993 UN Vienna Declaration states that “ All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” On the other hand, Universal Declaration of Human Rights affirms that the exercise of any right must be done in a manner consistent with the protection of other rights.

I wish to recall further that while international human rights instruments carefully protect freedom of expression, they also provide limits on extreme forms of expression. Indeed, as we all know, Article 19, paragraph 3 of the International Covenant on Civil and Political Rights (ICCPR) provides that the right to freedom of expression carries with it special duties and responsibilities and that it may therefore be subject to certain restrictions. (These restrictions are enumerated as “respect of the rights or reputations of others, protection of national security or of public order or of public health or morals”. I believe these restrictions are self-explanatory.) Finally, Article 20 of the Covenant makes it mandatory for all states parties to enact legal provisions to protect citizens from incitement to hatred and discrimination.

On the other hand, Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) specifically requires states to take active measures to combat racial hatred and discrimination.

In summary, we can assert that the international norms (as well as most national legislation) place legal limits on hate speech and discrimination. What is needed is effective and general implementation of these measures.

CLOSED MINDS

A “closed mind” means intellect is left out. In that sense closed minds generally emanates from unconditional attachment to ideologies and/or belief systems.

When a mind is closed, there is no room for curiosity or suspicion. Experimental thinking can not penetrate a closed mind. The only truth (for a person with a closed mind) is the one behind this closed door. There is no possibility to test such “one and only” truth with opposing or even divergent ideas and thoughts.

Furthermore, closed minds lead to authoritarianism. Democracy, pluralism, and thus human rights are rejected.

When doors are closed to different or differing thoughts, the owners of these thoughts are also left out; they become “the other”. There is no room for tolerance or even understanding to be shown to them. They are seen as a threat to the “absolute truth”, which explains everything according to the holders of such truths.

We have seen many examples of closed minds in the history. But nowadays we seem to be repeating the history in this sense also.

EQUALITY

Commitment to equality should lie at the centre in any debate about freedom of expression as well as about freedom from hate.

It is obvious that hate and hate propaganda (discourse) presents a serious threat to society. It undermines the dignity and self-worth of groups or persons targeted. It also contributes to disharmonious relations among various ethnic, religious, racial or cultural groups. The net result is erosion of tolerance and open mindedness that should flourish in multicultural societies which are supposed to be committed to the ideals of equality.

On the other hand, hate and hate discourse does not contribute to promotion of individual self-development in democratic societies and does not contribute to protecting and fostering a vibrant pluralistic environment where participation of all individuals is not only accepted, but also encouraged.

MEDIATION – RECONCILIATION

Arbitration, conciliation, reconciliation and mediation are concepts that are often confused with one another. Within the confines of this paper I will not try to define them in depth or attempt to analyze their characteristics. Suffice to say that mediation can be defined as “assisted negotiation” or “assisted communication for agreement”. Reconciliation, on the other hand, means “re-establishing normal relations between belligerents” within a conflict resolution sense, and means “restoring mutual trust and respect between individuals from different ethnic, cultural or religious backgrounds” in an ethno/cultural/religious relations context. (Alternatively, reconciliation may also mean to make two or more conflicting things compatible or consistent with each other.)

In this sense, reconciliation may be termed as being less formal than mediation as an amicable way of resolving a dispute or a conflict.

A Note on the role and mandate of the OIC on mediation and reconciliation within the context of conflict resolution is attached to this paper.

As far as reconciliation in an ethno/cultural/religious sense, I would like to submit the following.

It is a sad fact of our times that prejudices and stereotypes are dividing the so-called Muslim and Christian (or Western) Worlds. Enmities and even hostilities are on the rise, sometimes as a result of seemingly insignificant developments.

However, recent polls and studies demonstrate that there is a significant middle ground which rejects the view that Islam and the West are doomed to clash. An overall majority seem to believe that there is no inherent incompatibility between Islam and Christianity, thus no inevitable collision. Problems mainly arise from intolerant minorities on both sides, rather than from cultures or religions as a whole.

Taking these into consideration, the OIC has repeatedly proposed initiation of an exercise to lead to an historical reconciliation between Islam and Christianity, or if you will, between the Muslim World and the West. The objective would be to create a common platform whereby peoples of diverse beliefs can learn to co-exist, understand each other, try to diffuse tensions, create an environment of dialogue, respect and peace.

When realized through critical self-reflection, this endeavour will no doubt contribute also to fostering an objective understanding regarding the role of Islam and Muslims in the formation of European identity.

In all these efforts, the OIC believes that today's human civilization is one civilization with a multitude of tributaries and branches.

In conclusion, I am convinced that a hand of cooperation should be extended by all concerned in order to overcome the misunderstandings, biases, prejudices and manifestations of intolerance and hate that divide us.

ANNEX : I

The Role of the OIC in Mediation and Reconciliation

The evolving nature of present day conflicts and security challenges transcend national and even regional boundaries. Thus international cooperation and involvement to meet such challenges is a must.

The Organization of the Islamic Conference (OIC) is of the opinion that regional and inter-governmental organizations are better placed to assess the root causes of conflicts and accordingly can devise specific ways and means to tackle them. They have a greater vested interest, as they are attempting to resolve challenges arising in their own backyard. They also have an intimate understanding of the political, social, cultural and economic underpinnings of such conflicts and have the ability to identify and mobilize existing homegrown mechanisms to address them effectively and efficiently. This may be why the authors of the Charter of the UN devoted Chapter VIII to the role of regional and sub-regional organizations in the maintenance of international peace and security as the basis for global collective security.

The regional perspective also contributes to a deeper sense of participation, consensus building and democratization in the role of international organizations.

The Organization of the Islamic Conference (OIC) is an inter-governmental political organization established in 1969. The OIC is not a religious organization. Its Charter mandates it to coordinate and streamline the common and joint actions of its 57 Member States in all fields. As the second largest intergovernmental organization after the United Nations, it has a mission to defend the interests and just causes of its Member States. It represents more than 1.5 billion of the world's population.

In the 21st Century the OIC has emerged as a crucial player in the maintenance of international peace and security. Proceeding from its new vision and mission, the organization has continued to play an important role in the prevention, management and resolution of conflicts, promoting post-conflict reconstruction and defusing humanitarian crises in its Member States, as an important contribution to the global efforts in the promotion of international peace and security.

Having acquired a rich experience in the domain of conflict prevention and management over the last forty years, the OIC has underlined that it stands ready to cooperate meaningfully with all regional and international organizations to resolve disputes or prevent conflicts in its Member States, especially those long standing conflicts which continue to adversely impact global peace, security and stability. Acting in this manner is not only necessary, but also in the global collective interest.

The OIC Mandate to Engage in Mediation and Reconciliation

A close look at the map of conflicts around the globe will reveal that most of these conflicts are located in the Muslim World. That is why since its inception the OIC was specifically tasked to address the conflicts occurring between its Member States or disputes with other countries involving OIC Member States.

The Charter of the OIC exhorts its Member States that are party to a conflict to seek peaceful solutions through mediation, the use of good offices, arbitration, conciliation or judicial settlement. The Charter also mandates the OIC to cooperate with other international or regional organizations with the objective of preserving peace and security and settling disputes peacefully. Proceeding from this term of reference, the OIC has played an important role in the prevention, management and resolution of conflicts, promoting post-conflict reconstruction and addressing humanitarian crises in its Member States.

The Ten Year Program of Action adopted by the OIC Third Extraordinary Summit held in 2005 also mandated the organization to strengthen its role in conflict prevention, confidence building, peacekeeping, conflict resolution and post-conflict peace building through enhanced cooperation with other international and regional organizations. This mandate entails the enhancement of its role in mediation and conflict resolution within its Member States.

Based on the mandates in the Charter and in the Ten Year Program of Action, the Secretary General of the OIC has increasingly used his good offices to mediate in various disputes. He appointed various Special Representatives who continue to contribute in finding peaceful solutions to various conflicts. The Secretary General has also visited a number of key non-OIC Member States and headquarters of international and regional organizations to develop cooperation in the field of maintenance of international peace and security. On the other hand, the OIC General Secretariat has hosted a number of important representatives of international and regional organizations and countries and discussed with them approaches to settlement of disputes and issues relating to the promotion of international peace and security.

The OIC believes that approaching problems solely from the angle of security cannot lead to lasting and comprehensive solutions. Short-term solutions must give way to a proper understanding of the root causes of conflicts, which often lie in political grievances, injustice, alienation, backwardness and underdevelopment. Short-term solutions must also be supplemented with good governance. As a mark of its commitment to address socio-economic problems that often serve as the root causes of conflict, the OIC has launched a Special Fund for Poverty Alleviation. The OIC also attaches great importance to its cooperation with the UN Peace Building Commission to face the challenges of post-conflict rehabilitation in its Member States. In this context, the OIC operated a number of Trust Funds to help post-conflict peace building.

Principles and Lessons Learned from OIC Mediation and Reconciliation Experience

Based on its mediation and/or reconciliation efforts in various conflicts, the OIC presents the following lessons learned:

- The multiplicity of international and regional organizations active in any conflict creates overlapping and often complicates the mediation process. There is now a realization by stakeholders that pooling resources and efforts through a coordinated approach like the idea of the international contact groups have been found to be more effective in addressing the conflict situation. Joint mediation also proves to be more effective.
- Timely intervention is very important to prevent escalation. However, issues related to sovereignty are found to militate against such interventions.

- Fractionalization or split among the parties to a conflict poses a serious handicap in mediation efforts.
- Effective mediation requires a clear mandate and a defined role of the leading organization in the process. There is a vital need for effective coordination between all the stakeholders and, in particular, with the leading organization in the process.
- Each organization has its own comparative advantage. The OIC prefers to focus on conflicts where its mediation efforts could bring benefit.
- OIC as a large regional organization is better placed to deal with conflicts in the Muslim World that constitutes its primary constituency and immediate environment.
- The main advantages and the relative strength of the OIC are its credibility, neutrality, impartiality and its acceptance by the Muslim World.
- However, in the field of mediation OIC's limited institutional capacities, both human and material, must be recognized.
- The main challenge facing the OIC in its mediation efforts is the multiplicity of international and regional organizations active in the conflicts in OIC Member States. This fact complicates its mediation initiatives and limits its achievements. The OIC needs to build up its capacities in order to enhance its effectiveness and visibility in mediation consistent with its new vision and mission. The UN can support the OIC in expanding its capacities for mediation.
- Preventive action/preventive diplomacy is equally important for the OIC. Early warnings should be monitored and duly considered so that conflicts can be prevented before they reach full-fledged conflict proportions and become too complex.