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A Unique Mandate[1]

The OSCE Representative on Freedom of the Media

Introduction

Since the start of the Helsinki Process, the OSCE[2] has taken a comprehensive approach to European security. Alongside politico-military and economic co-operation, the 1975 Final Act of Helsinki already included questions of human rights in the so-called third basket – the human dimension – and explicitly mentioned freedom of opinion and the media. While the focus initially lay on improving journalists' working conditions and enabling communication across the boundaries of political systems, monitoring compliance with the principle of media freedom became a key field of OSCE activity with the creation of the position of OSCE Representative on Freedom of the Media in 1997. Other international organizations such as the Council of Europe and various NGOs also pursue an approach that supports the creation of a free press as a necessary foundation for stable state structures and free civil societies. In the view of all these organizations – including the OSCE – media freedom is relevant to stability and the preservation of peace.

Security and peace in democratic societies depend upon compliance with the principles of the rule of law, functioning state institutions, and an informed civil society. The press has a critical role in several respects: On the one hand, it possesses a corrective function that makes it a vital check on the exercise of power. Today, this no longer only applies with regard to governments, but also corporations, interest groups, and other collective actors. At the same time, political opinion forming assumes that the population has access to information: A free press is therefore a cornerstone of civil society.

Nevertheless, the scholarly literature on the OSCE Representative on Freedom of the Media consists merely of a handful of papers and articles, two of which have appeared in previous editions of the OSCE Yearbook.[3]

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1   The opinions expressed in this contribution are those of the author alone.
2   For convenience' sake, where the text refers to the CSCE/OSCE as a whole, the terms "OSCE" and "Organization" will be used to stand for "CSCE/OSCE" and "Conference/Organization". Where any ambiguity remains, the full form will be used.
3   Significant works include: Dušan Reljić, The OSCE Representative on Freedom of the Media, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2001*, Baden-Baden 2002, pp. 377-386; Christian Möller, *Presse- und Medienfreiheit im OSZE-Gebiet: Mandat, Möglichkeiten und Aktivitäten des Beauftragten für Medienfreiheit der OSZE* [Freedom of the Press and of the Media in the OSCE Area; Mandate, Possibilities, and Activities of the OSCE Representative on Freedom of the Media], Kiel 2002; Christian Möller, The Mandate, Possibilities and Activities of the OSCE Representative on Freedom of the Media, in: Victor-Yves Ghebali et al.

Areas requiring further examination include the structural significance of a free press within the human dimension for security policy, preserving peace, conflict prevention, and post-conflict rehabilitation.

The Importance of Press and Media Freedom for Civil Society and Human Security

The human right to freedom of expression is codified in several documents, including the Universal Declaration of Human Rights (Article 19), which was adopted by the General Assembly of the United Nations on 10 December 1948 in its resolution 217 A (III), and the International Covenant on Civil and Political Rights (ICCPR; Article 19), adopted on 16 December 1966. Further sources include the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), passed by the Council of Europe on 4 November 1950, which deals with Freedom of Expression in Article 10. In the course of the development of the OSCE, too, it became clear just how important the human dimension – which was characteristic of the Organization's comprehensive approach to security – was for the overall goals of the OSCE.

While the kind of attention paid to press and media issues has varied during the history of the OSCE, the media itself is increasingly undergoing change. In different stages of state development, the media takes on different roles. For one thing, it is an important branch of the economy. This is particularly evident in the transition states of the former Eastern Bloc. Formerly state-owned media, some of which played a key role in the revolutions in the late 1980s and early 1990s, were privatized during the transition process and now have completely different tasks to perform.[4] One question that arises here concerns what regulations are necessary to ensure a functional marketplace of ideas and the extent to which actors in the field of security policy can play a role in the transformation process.[5]

The internet can be a means of providing non-discriminatory access to networks and information, but may also be used to censor oppositional

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(eds), *The Future of the OSCE in the Perspective of the Enlargements of NATO and the EU*, PSIO Occasional Paper 1/2004, pp. 123-145; Christian Möller, Press Freedom in the OSCE Area and the Activities of the OSCE Media Representative, in: Institute for Peace Research and Security Policy at the University of Hamburg/IFSH (ed.), *OSCE Yearbook 2003*, Baden-Baden 2004, pp. 323-336.

4 Cf. e.g. Barbara Thomass/Michaela Tzankoff (eds), *Medien und Medienpolitik in den Transformationsgesellschaften Ost- und Südosteuropas* [Media and Media Policy in the Transformation Societies of Eastern and South-Eastern Europe], Opladen 2001.

5 Cf. Christian Möller/Alexandra Popescu, Transformationen des Journalismus: Über die Implementierung des Prinzips Unabhängigkeit in osteuropäischen Staaten seit 1989 [Transformations of Journalism: On the Implementation of the Independence Principle in Eastern European States since 1989], in: Freimut Duve/Michael Haller (eds), *Leitbild Unabhängigkeit: Die publizistische Verantwortung in der Mediengesellschaft* [Pursuing Independence: Journalistic Responsibility in the Media Society], Konstanz 2004.

voices. For instance, the media NGO Reporters Without Borders (RWB) has reported examples of state-controlled internet service providers blocking access to websites of government-critical independent media organizations in states in the OSCE region.[6]

A number of studies also reveal a direct connection between the level of corruption and the degree of press and media freedom.[7] Especially, but not only, in the transition states of Eastern Europe, South-eastern Europe, the Caucasus, and Central Asia, corruption and the abuse of power impede the emergence of the rule of law and economic development, thereby threatening social stability. Aside from its importance as an inalienable human right, there are also concrete economic and security-related arguments for the necessity of a free press.

The Mandate of the Media Representative

2006 is the ninth year in which the Representative on Freedom of the Media has carried out his work in the OSCE area. The mandate of the youngest of the three independent OSCE institutions was adopted in November 1997 and the Office opened in Vienna in January 1998. The Representative on Freedom of the Media thus joined the Office for Democratic Institutions and Human Rights and the High Commissioner on National Minorities as the third institution to be established by the OSCE participating States with a unique degree of independence for an international governmental organization.

On taking office, Freimut Duve, the first Media Representative acknowledged that this institution would not have been possible without the Helsinki Process and the unique history of the OSCE in Europe:

When the OSCE became the first United Nations regional organization to establish an office for freedom of the media with interventionist powers, this was only possible thanks to the unique story of Helsinki. Without *Solidarność*, without Alexander *Solshenyzin*, without Václav *Havel*, without the thousands of nameless authors, many of whom were still being sentenced to prison as late as the 1970s, this willingness to support supranational monitoring of press freedom is impossible to understand.[8]

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6   Cf. Reporters Without Borders, *2006 Annual Report,* at: http://www.rsf.org/article.php3?id_article=17177&Valider=OK.
7   Cf. Aymo Brunetti/Beatrice Weder, *A Free Press is Bad News for Corruption*, Wirtschaftswissenschaftliches Zentrum der Universität Basel, WWZ Discussion Paper No. 9809, Basel 1998.
8   Freimut Duve, Medienfreiheit organisieren. Ein Amt für Pressefreiheit in der OSZE [Organizing Media Freedom. An Office for Press Freedom in the OSCE], in: *Internationale Politik* 5/2001, pp. 37-42, here: p. 37 (author's translation; emphasis in original).

The 1997 mandate established two main fields of activity for the Media Representative: assistance and monitoring. In addition, the participating States that agreed the mandate restated their dedication to all existing commitments to press freedom. Starting with the Helsinki Final Act, many such commitments were adopted, to which all OSCE States, regardless of their culture, geography, history, or economic situation would be held.

Under "assistance", the mandate covered such practical matters as training, workshops and conferences for journalists, publications, recommendations, and support for the legislative processes and legal reviews.

Under "monitoring", the Representative was authorized to maintain an informal network of NGOs, media organizations, journalists, and other watchdog organizations in all 56 states in the OSCE area.

In March 2004, Miklós Haraszti of Hungary took up the position of Representative.

Statistics

In the first eight years of its existence, the Office of the Media Representative made 370 public interventions in cases of violations of OSCE principles on press freedom (figure 1). While the number of interventions varied from year to year, there were never fewer than 30. By averaging 3.9 interventions per month, the Office of the Media Representative demonstrates that, despite its small size, it is a highly active component of the OSCE.

There are several reasons, however, why these figures do not cast any light on the overall situation regarding press freedom in the OSCE region. For one, the Media Representative cannot intervene every time press freedom is violated in the OSCE area. For instance, the total number of violations in 1999-2000 alone was 754.[9]

Furthermore, the interventions mentioned here are only those that took place in the public eye and were officially recorded in the Media Representative's Yearbook. In many other cases, the Media Representative intervenes behind the scenes by negotiating bilaterally with individual participating States. As well as taking advantage of the opportunity his position presents to criticize infringements of press freedom in front of a wide audience, the Media Representative has also made use of "silent diplomacy ", for instance, by commenting on proposed legislation, or in the campaign for the decriminalization of libel and slander.

The numbers given in figure 1, therefore, show only serious infringements that required robust public intervention.

It should also be noted that, despite some ups and downs in numbers, there is no sign of a downwards trend – demonstrating that there is no guar-

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9   Cf. International Press Institute (IPI), in: *OSCE Representative on Freedom of the Media, Yearbook 2000/2001*, Vienna 2001, p. 184

antee of press freedom everywhere even within Europe's 56 self-declared democracies.

Figure 1 – Interventions per Year
(370 in total)
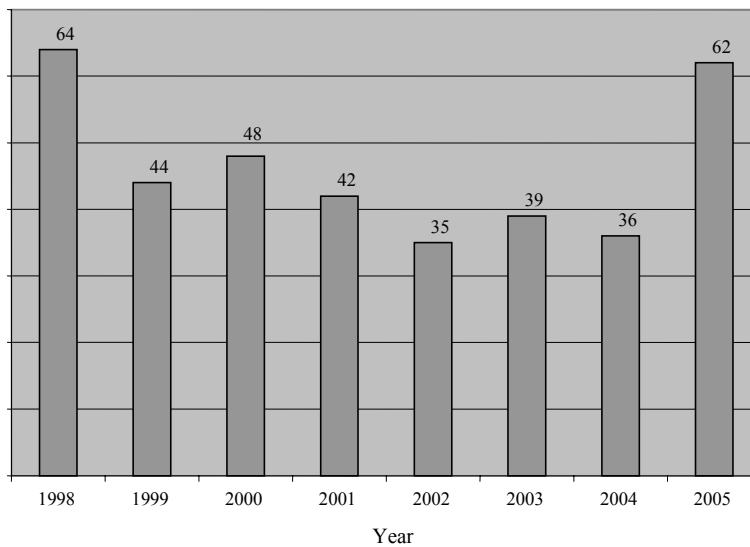
RFOM Interventions 1998-2005. Source: OSCE Representative on Freedom of the Media (ed.), Freedom and Responsibility: Yearbooks of the Representative on Freedom of the Media 1998-2005, Vienna 1998-2005.

In 2005, there were 62 interventions, divided among 22 states[10] throughout the OSCE region. As in previous years, the empirical data contradicts accusations that the Media Representative applies geographically determined double standards by focusing solely on countries East of Vienna, as shown in figure 2.

One thing the graph does not show is the variety among the interventions. The means of intervention are determined above all by the type of infringement. While, in the case of mistreatment or unjustified detention of a journalist or the closure of a newspaper, a concerted high-profile campaign of protest may put pressure on the governments involved and – as has occurred in several cases – can lead to the release of a journalist from prison, or at least

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10   Albania, Azerbaijan, Belarus, Belgium, Croatia, France, Georgia, Germany, Greece, Italy, Kazakhstan, the former Yugoslav Republic of Macedonia, Poland, the Russian Federation, Serbia and Montenegro, Slovakia, Switzerland, Tajikistan, Turkey, Ukraine, the USA, Uzbekistan, and three interventions in relation to the International Criminal Tribunal for the former Yugoslavia (ICTY).

the exchange of prison for exile, in other cases, bilateral discussions with the government of the country in question are the more appropriate means.

Figure 2 – RFOM Interventions 2005
(59 in total)
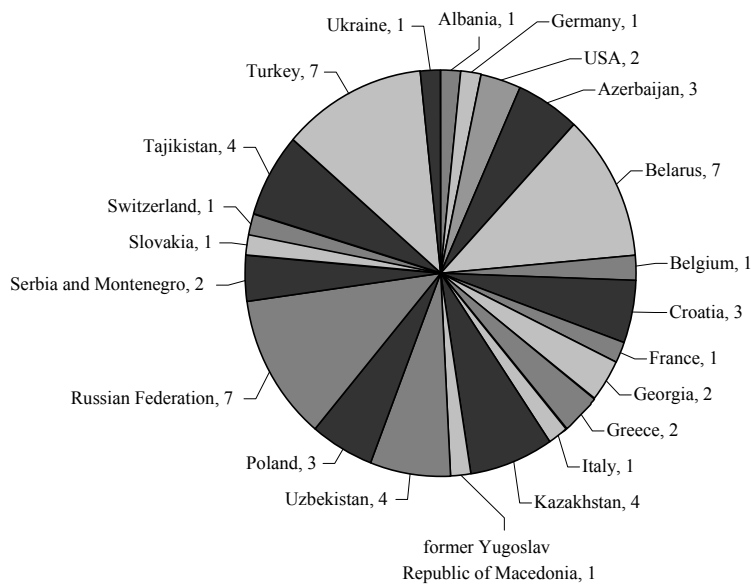
In choosing the means of intervention, the Media Representative can select from a range of graduated instruments, which, however, need not be applied according to the escalatory principle. These include the option of raising a current issue of interest in the Permanent Council at any time, press releases and press conferences, open letters, legal opinions, visits to the country in question, country reports, and indeed any and all other appropriate means on a case-by-case basis.

Besides intervening in specific cases, the Media Representative pursues long-term strategies in various areas that aim to secure the freedom of the media in the OSCE area in the long run. Some of these longer-term projects are profiled in the following sections.

The Media in Conflict Situations in the OSCE Area

In conflicts or situations characterized by ethnic tension, the media has a special role to play in several regards.

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While free, independent, and balanced reporting may contribute to stopping or at least limiting the escalation of conflicts or ethnically motivated violence, there is also a danger that the responsibility that comes with press freedom will be abused. Ethnic propaganda or nationalistic agitation in the media may cause conflicts to escalate or impede the work of post-conflict rehabilitation. By finding three journalists from the Rwandan radio station RTLM guilty of participating in genocide and incitement to genocide, the ruling of the UN International Criminal Tribunal for Rwanda demonstrated the role that the media may be said to play in conflicts.[11] In April 2004, the OSCE Media Representative published a report on the role of the media in the violence that rocked Kosovo that March. He concluded that "without the reckless and sensationalist reporting on 16 and 17 March, events could have taken a different turn. They might not have reached the intensity and level of brutality that was witnessed or even might not have taken place at all."[12]

By contrast, in other conflicts, the new media have proved an important means of organizing opposition and resistance. In 1999, for example, during the Kosovo conflict, the B92 radio station, which had been closed down by the Milošević regime, reached a global online audience with the help of a Dutch internet service provider. It became one of the few sources of independent information from Belgrade after journalists from NATO states had been expelled.

The media's role in publicizing and representing conflicts are also of considerable importance for actors in the field of security policy. The Vietnam War was not the first time that reporting was important for the international perception of a conflict. Reporting may even have helped to ensure the deployment of international peacekeeping forces, with images of internment camps in Bosnia contributing to the dispatch of UNPROFOR, later replaced by IFOR and SFOR.[13]

The Media in Transition States

During the last 15 years, the media landscapes in the states of Eastern Europe have undergone a substantial transformation. They played a crucial role in the peaceful transfer of power in the late 1980s. During the political transformation and economic development of these states, the media has also gone from

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11 Cf. e.g. Sharon LaFraniere, Court Finds Rwanda Media Executives Guilty of Genocide, in: *New York Times*, 3 December 2003, at: http://www.nytimes.com/2003/12/03/international/africa/03CND-RWAN.html?position=&ei=5007&en=9ab11b1d2f99127b&ex=1385874000&partner=USERLAND&pagewanted=print&position=. A critical view is given by Brendan O'Neill, Writing an article is not the same as using an Uzi, in: *Spiked Online*, 9 December 2003, at: http://www.spiked-online.com/Articles/00000006E009.htm.
12 OSCE Representative on Freedom of the Media, *The Role of the Media in the March 2004 Events in Kosovo*, at: http://www.osce.org/documents/rfm/2004/04/2695_en.pdf.
13 Cf. George Kennedy, Desinformation der Medien führte zur Intervention in Bosnien [Media Disinformation led to Intervention in Bosnia], in: *Novo* 27/1997, pp. 26f.

being dominated by organs of the state to become a collection of privatized corporations. In addition, in recent years, investment in Eastern Europe by foreign media companies has grown, especially in the area of print media, but also in radio and television.

Despite privatization, liberal media laws, and economic competition, serious problems may be discerned in several countries with regard to the independence of the media, the variety of opinion, and the high standards of objectivity required. There are a range of reasons for this, and the situation differs markedly from state to state. While carrying out a survey into the effects of media concentration on professional journalism, the Office of the OSCE Media Representative carried out numerous interviews with newspaper editors, representatives of journalists' organizations, academics, and NGOs. These revealed some of the reasons for the ongoing problems with press freedom.[14]

The media played a fundamental role in the collapse of communist governments in Eastern Europe. Reporting of mass demonstrations in Leipzig, scenes of fights between students and the police on the streets of Prague, and pictures of protests in Bucharest helped to accelerate and strengthen the sense that change was imminent.[15] Yet the role of the media as a system-critical force and defender of free opinion seems to have changed considerably during the last decade.

After the collapse of communism, state-owned industries throughout the planned economies of the former Eastern Bloc began to be privatized; this included newspapers and magazines. Members of the government or those close to them were often given a first chance to appropriate the most attractive enterprises, vying in this regard with Western companies.

Characteristic of the Eastern European transformation states and a curious continuity at first glance is the survival in some countries of the most important daily newspapers from the communist period. These publications secured their continued existence by transforming themselves overnight to offer a variety of opinions and ideas that would meet their populations' needs for free expression. In doing so, they often adopted a populist and militant tone that created the illusion of a substantive new press. Even if various political viewpoints and topics that had been taboo in the communist period were now given a voice, the prevailing tone did not differ much from the partisan voice of the communist press.[16] While the arrival of journalistic sensationalism meant that this mode of presentation lost some ground, even now, the media landscape still tends to be characterized by a mixture of sensationalism and partisanship. Journalistic practice gives the impression of journalism as first

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14   Johannes von Dohnanyi/Christian Möller, *The Impact of Media Concentration on Professional Journalism*, OSCE Representative on Freedom of the Media, Vienna 2003, at: http://www.osce.org/publications/rfm/2003/12/12244_102_en.pdf.

15   Cf. John Horvath, The Changing Face of the Mass Media in Eastern Europe, in: *Telepolis*, 6 June 1997, at: http://www.heise.de/tp/english/inhalt/reg/1214/1.html.

16   Cf. Mihai Coman, *Mass Media in Romania post-comunista*, Iaşi 2003, p. 73.

and foremost a political act rather than a service based on the gathering and presentation of information.[17]

After years of censorship and indoctrination, the path to the establishment of public opinion and the institutionalization of the mass media as a fourth estate is certainly long and difficult. What is clear is that, whatever the starting point of a reforming state, the emergence and promotion of public opinion is an essential precondition for a successful transformation process. In this connection, mass media – as the most important institution for the creation of public discourse – is a motor for the democratization of a society.

Nor has the development of a largely independent press always been without problems in Western democracies. One need only think of the *Spiegel* affair in Germany in 1962. However, here the solidarity among journalists, the reaction of the public, and finally the courts acted as a corrective to overzealous executives. Nevertheless, this is only possible when journalists are well trained, aware of both their rights and their responsibilities, and capable of a high standard of investigative journalism.

Only the interplay of economic security in a market economy and a functioning judicial system, guaranteed editorial independence, and thorough training can form the foundation for a free and independent press and plurality of opinion – not only in the transformation states of Eastern Europe.

Libel and Defamation

In many states in the OSCE region in which censorship officially does not exist, governments nonetheless attempt to exert pressure on the media and individual journalists. This "structural censorship" amounts to indirect restrictions by state authorities on the free activity of the media; it has often come to replace direct censorship by a state censoring agency. At all levels – local, regional, and national – the state has a plethora of instruments that it can use to influence journalists: control of printing infrastructure, distribution networks, property rents, fire regulations, pressure on pro-government enterprises only to advertise in chosen media or to withdraw their advertisements if a government-critical line is taken. The list can be continued indefinitely: the closure of private printing operations, sudden inspections by the financial authorities, discrimination in awarding licences, etc.[18]

All these methods amount to censorship while presenting the appearance of legitimate official actions. The difference between justified acts and

17   Cf. Ray Hiebert, Transition: From the End of the Old Regime to 1996, in: Jerome Aumente et al., *Eastern European Journalism: Before, During and After Communism*, Cresskill 1999.
18   Cf. Reljić, cited above (Note 3), p. 384.

arbitrary repressive measures can only be established via the assessment of various sources on site.[19]

Libel and defamation suits are another favoured instrument for reprimanding "troublesome" media. They are brought mostly by politicians or government officials who feel that their honour has been insulted or their personal rights infringed by reporting that is critical of their actions.

While it is not possible to categorically exclude the possibility of government representatives being libeled in press reports, individuals occupying positions that place them in the public eye need to develop a greater degree of tolerance of what is reported in the media, especially since much of it is directed not at them personally but at the way they have performed their official functions. This kind of criticism of government actions is indispensable for the fulfilment of the corrective function of the press.

If the state chooses to abuse the relevant legislation, just the threat of large fines can be enough to cause self-censorship, while successful prosecution may even result in bankruptcy. Because media products are also commodities, their producers – except when acting according to purely political motives – have an interest in ensuring that they turn a profit. Media self-censorship is a difficult topic, as it is extremely difficult to tell from outside when editorial decisions made in the heads of journalists are influenced by fear of possible repression, whether by the publishers or the authorities, which is often exacerbated by low income or inadequate social provision.

In many states in Eastern Europe (but not only there) in which a tendency towards the increasing "tabloidization" of the mass media can be seen – perhaps as a result of the competition for the highest readership figures – it must be asked whether it is really the readers that are tired of political journalism, or rather the journalists and the press themselves. In other words "What is to be done when they decided that obedience is the editorial policy? When the media agenda slides further and further away from the public agenda? When street protests get only a fraction of the coverage that a car crash gets?"[20]

Naturally, the answers to these questions are partly determined by the prevailing economic and political conditions. If the consequence of printing a critical article is a crippling fine or even a prison sentence for defamation handed down by a court, it is hard to accuse a journalist of self-censorship.

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19   Cf. Christian Möller, Press Freedom in the OSCE Area and the Activities of the OSCE Media Representative, cited above (Note 3), p. 328.
20   Ioana Avadani, "Mooning" the Romanian Media, in: von Dohnanyi/Möller, cited above (Note 14), pp. 175-179, here: p. 178.

The Impact of the Internet on Media Freedom and Security Policy

In the second half of the twentieth century, starting with the establishment in the USA of ARPAnet in the 1960s and, more especially, the development of the World Wide Web in 1993, the internet developed into a comprehensive global communication network of ever-growing importance, enabling the exchange of information across national boundaries. It is of the very nature of the internet that it is not restricted to a single use. Communication between individuals, buying and selling, the distribution of news, and education (e-learning) are just some of the possible current uses, while others – such as e-government – are still to come. The internet can promote the development of new forms of media or publications without high start-up costs acting as a barrier to market entry, and this could enable the emancipation of post-totalitarian media systems and the creation of transnational media groups.

At the same time, a small portion of this platform is also used to spread illegal and "undesirable" material, such as racist or other propaganda and hate speech, and these have the potential to escalate conflicts. The integration of security-critical areas into global networks creates another horizon of danger. In asymmetrical conflicts, in particular, cyberterrorism, which attacks the network architecture itself, can pose a danger to security and functioning infrastructures.

In 2003, at the World Summit on the Information Society (WSIS) in Geneva – which next convened in 2005 – the UN dealt comprehensively for the first time with the complex of issues around the information society. In 2004, the OSCE looked into the topic of possible connections between violent crime and internet propaganda and sedition, organizing a conference in Paris, among other events. The Media Representative released his first recommendations on this topic – the Amsterdam Recommendations – in 2003. He also published a comprehensive guide: the "Media Freedom Internet Cookbook".[21]

As the decentralized and, in principle, free infrastructure of the internet has grown, so have the efforts of governments, international organizations, corporations, and other actors to regulate or even censor both access and the dissemination of content. On the one hand, there is competition between various regulatory models, as attempts are made to adapt them from conventional media. On the other, new instruments are being developed specifically for the internet: A number of international actors are currently pursuing a range of – sometimes contradictory – approaches to regulating and hence shaping the media landscape of the future. These include the EU and its institutions, with the Information Society and Media Directorate-General and

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21   Cf. Christiane Hardy/Christian Möller (eds), *Spreading the Word on the Internet. 16 Answers to 4 Questions*, OSCE Representative on Freedom of the Media, Vienna 2003; Christian Möller/Arnaud Amouroux (eds), *The Media Freedom Internet Cookbook*, OSCE Representative on Freedom of the Media, Vienna 2004.

Safer Internet Action Plan; the Council of Europe, with various directives (e.g. the Cybercrime Convention); and the lawmakers of individual states.

In this connection, it is important to analyse the opportunities that international actors possess, and the activities they undertake. In order to do this, it is also necessary to consider the influence and consequences of technical standardization of the infrastructure and the "politics of code"[22] on the scope of the regulatory decision making carried out by international actors. In this field of policy, technological developments create potential regulatory facts. Linking basic technological developments – as well as relevant legal norms and international agreements – with their significance for societal developments, and the consequences for freedom of opinion and freedom of information – and hence for the human dimension in modern communications infrastructures – is a new interdisciplinary research paradigm. The Media Representative continues to pursue this aspect of "internet governance" within the scope of his internet activities during 2006.

Tolerance

What became known as the "Cartoon Controversy" – the furore caused by the caricatures of Mohammed in the Danish newspaper *Jyllands Posten* – is determining a significant proportion of the Media Representatives' agenda in 2006. Several conferences have been organized to discuss the topic, and it has been discussed by the Permanent Council. Finally, the Supplementary Human Dimension Meeting, held in Vienna in July, also made this one of its agenda items.

Following the publication on 30 September 2005 of several drawings depicting the prophet Mohammed, complaints were first received by the Danish prime minister from several ambassadors of Muslim countries on 20 October. At that point, however, there were no further protests.

In early 2006, Danish Imams then took a dossier of these and other cartoons on a lecture tour of the Middle East. As knowledge of the cartoons spread, there were violent protests, and calls for boycotts of Danish and other Western products; demands were also issued that the Danish government apologize. The Danish government even felt the need to deny that copies of the Koran were being burned openly in Copenhagen, the prime minister commenting that "there has been no burning of the Quran in Denmark. If any person attempts to do so the police authorities will react immediately".[23]

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22   Cf. Lawrence Lessig, *Code and Other Laws of Cyberspace*, New York 1999. See also: Proceedings of the conference "The Politics of Code – Shaping the Future of the Next Internet" held on 6 February 2003 by the Programme in Comparative Media Law and Policy at Oxford University, at: http://pcmlp.socleg.ox.ac.uk/code/.

23   Prime Minister Anders Fogh Rasmussen's Opening Statement at the Press Conference on 7 February 2006, at: http://www.um.dk/en/servicemenu/news/primeministerandersfogh rasmussensopeningstatementinenglishatthepressconferenceon7february2006.htm.

This last story could be an indication that it was not the irresponsible use of press freedom but rather a shortage of objective information and the deliberate propagation of rumours that were the key triggers for the violent protests.[24]

Other newspapers reprinted the cartoons, leading to a hard-fought discussion of whether press freedom is an absolute right or, if not, where the limits of responsible use of this right might lie.

The Danish government repeatedly stated that it was not responsible for the printing of the cartoons and was consistent in refusing to apologize. In addition, the decision on the legal propriety of the publication lay in the hands of the Danish courts and not the government.[25]

Nonetheless, one can see here a movement towards attempting to balance the two fundamental rights of media freedom and freedom of religion. This often culminates in assertions that the press has responsibility not to publish certain content.

Critics of this position, on the other hand, note that any attempt to balance freedom of opinion and expression with other rights is also at the same time a restriction of freedom of opinion and expression. This is not excluded *per se*, and is possible in exceptional circumstances, and explicitly provided for, for instance, in Article 10 of the European Convention on Human Rights (ECHR). However, it must be justified, necessary, and appropriate.

Nevertheless, voluntary self-regulation by means of professional organizations, press councils, or codes of conduct is to be preferred to interventions by the state in the freedom of the press.

The Media Representative took up this topic several times. In his regular report to the Permanent Council, he concluded that "we believe that the necessary growth in respect for other cultures does not require the passing of new legislation to regulate media activity".[26]

Finally, we should note that the only real proof of press freedom is in relation to problematic content. While uncontroversial content that raises no one's ire has little need of protection, it is precisely controversial topics that show the effectiveness of measures to protect press freedom.

This is confirmed by the European Court of Human Rights in its rulings: "Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the de-

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24 Cf. CNN, *Protesters burn Consulate over Cartoons*, 5 February 2006, at: http://edition. cnn.com/2006/WORLD/asiapcf/02/05/cartoon.protests/.

25 Although *Jyllands Posten* did apologize, this was not deemed sufficient by many Muslims.

26 OSCE Representative on Freedom of the Media, *Regular Report to the Permanent Council*, 16 February 2006, at: http://www.osce.org/documents/rfm/2006/02/18074_en.pdf.

mands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'."[27]

Commitments

The opportunities offered to the Media Representative on the basis of the Helsinki Process, the declarations of the Summit and Ministerial Meetings, and his mandate – which is based upon these earlier documents – represent a unique proposition within the international community. No international organization in Europe unites so many states in such detailed commitments to human rights and freedom of opinion and expression.

The diplomatic and political weight of the Media Representative stands and falls with the importance the participating States ascribe to the OSCE as a whole. On top of that, there are voices within the Organization that see an imbalance, an overemphasis on the human dimension of the third basket. They are calling for a stronger focus on the economic dimension.

The added value over and above other international security organizations that the comprehensive approach incorporating the human dimension offers can only bring results if the participating States put into practice the commitments they have entered into. The extent to which they will do this, only time will tell. So far, however, freedom of the media does not represent a success story.

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27   *Handyside v. the United Kingdom*, ECHR judgment of 7 December 1976.