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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

Report of the expert seminar on the role of the Internet in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination

(Geneva, 10-14 November 1997)

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I. INTRODUCTION

A. Organization of the seminar

1. Following General Assembly resolution 48/91 of 20 December 1993, proclaiming the Third Decade to Combat Racism and Racial Discrimination, and resolution 49/146 of 23 December 1994, by which the Assembly adopted the revised Programme of Action for the Third Decade, and in accordance with Assembly resolution 51/81 of 12 December 1996 and Commission on Human Rights resolution 1997/74 of 18 April 1997, the Office of the United Nations High Commissioner for Human Rights (OHCHR) organized a seminar on the role of the Internet in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. The purpose of the seminar was to find ways and means to ensure a responsible use of the Internet.

B. Participation

2. The following experts were invited to prepare background papers for the seminar, to introduce their topics and to lead the discussions which followed: Ms. Debra Guzman, Executive Director of the Human Rights Information Network; Mr. Philip Reitinger of the Department of Justice of the United States of America; Mr. Timothy Jenkins, Chairman of Unlimited Vision, Incorporated; Mr. Eric Lee, Public Policy Director of Commercial Internet eXchange (CIX); Mr. Agha Shahi, member of the Committee on the Elimination of Racial Discrimination; Ms. Maya Sooka, Association for Progressive Communication, Southern African Nongovernmenal Organization Network; Mr. Anthony M. Rutkowski, Vice President of General Magic Inc.

3. The following States were represented: Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Dominican Republic, Ethiopia, France, Germany, Guatemala, Honduras, Hungary, Italy, Iran (Islamic Republic of), Japan, Pakistan, Peru, Romania, Slovakia, Slovenia, Sudan, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, United States of America, Uruguay and Viet Nam.

4. Representatives of intergovernmental and non-governmental organizations also took part along with representatives of human rights institutes, United Nations bodies and specialized agencies. The list of participants is given in the annex to this document.

C. Opening of the seminar and election of officers

5. The seminar was opened on behalf of the Secretary-General by the Acting Deputy High Commissioner for Human Rights, Mr. Ralph Zacklin. In his opening statement, Mr. Zacklin said that the Internet, as a means of communication, bore great potential, notably for improving education techniques, circulating health-related information, facilitating the debate between distant cultures, encouraging dialogue and nurturing comprehension among peoples in our divided world. However, while conceived as a means of celebrating a variety of freedoms, the Internet was also being used as a means of vilifying groups and/or individuals in society. In North America, in particular, "high-tech hate", or "cyber-racism", was growing at an alarming rate. The major challenge for the international community today was how to avoid restrictions

on the freedom of expression while continuing to provide proper legal protection to the rights of groups and individuals. He expressed the hope that the seminar would contribute to the development of relevant strategies and prepare the ground for further consultations by providing pertinent observations beneficial to the continuing struggle against racism and racial discrimination.

6. Mr. Agha Shahi was elected Chairperson by acclamation.

D. Agenda

7. At its 1st meeting, on 10 November 1997, the seminar adopted the following agenda (HR/GVA/DRI/SEN/1997/1):

1. Racism and racial discrimination on the Internet.

2. Prohibition of racist propaganda on the Internet: juridical aspects, national measures.

3. Technical aspects of screening racist propaganda on the Internet: national measures.

4. Technical aspect of screening racist propaganda on the Internet: international measures.

5. Prohibition of racist propaganda on the Internet: juridical aspects, international measures.

6. Elements relating to conduct and good practice for Internet-based materials.

E. Documentation

8. The following background papers were prepared for the seminar at the request of the Office of the High Commissioner for Human Rights:

HR/GVA/DRI/SEM/1997/BP.1	Background paper prepared by Ms. Maya Sooka
HR/GVA/DRI/SEM/1997/BP.2	Background paper prepared by Mr. Timothy Jenkins
HR/GVA/DRI/SEM/1997/BP.3	Background paper prepared by Mr. Agha Shahi
HR/GVA/DRI/SEM/1997/BP.4	Background paper prepared by Mr. Anthony Rutkowski
HR/GVA/DRI/SEM/1997/BP.5	Background paper prepared by Mr. Philip Reitinger
HR/GVA/DRI/SEM/1997/BP.6	Background paper prepared by Ms. Debra Guzman
HR/GVA/DRI/SEM/1997/BP.7	Background paper prepared by Mr. Eric Lee

II. PRESENTATION BY EXPERTS OF THEIR PAPERS

A. Racism and racial discrimination on the Internet

9. At its 1st meeting, on 10 November 1997, Ms. Debra Guzman presented the paper on item 1 (HR/GVA/DRI/SEM/1997/BP.6).

10. After a brief historical overview of how individuals and organizations had used the technology of the Internet to promulgate what was deemed to be "offensive" or "hate" speech, Ms. Guzman provided information and examples of how the human rights activist community had been using this communication tool. Some of the thinking by industry leaders about the notion of regulating the Internet in order to prevent abuses on it was also briefly outlined. The general consensus of the computer communications leaders canvassed was that it should not - not that it cannot - be regulated. Opinions by online activists worldwide as to regulation were offered and again, the consensus was that there should be no regulation. It was not easy to find the "hate" sites and the theory that children or other vulnerable groups would easily stumble across this information should not be supported.

11. Lastly, Ms. Guzman described a trial currently taking place in Canada which was addressing the issue of a hate speech site located in the United States. This ground-breaking case could pave the way for legal opinions on hate speech sites located in countries where it was not illegal.

B. Prohibition of racist propaganda on the Internet: juridical aspects, national measures

12. At its 3rd meeting, on 11 November 1997, Mr. Philip Reitinger presented his paper on item 2. He said that the Internet had undeniably had positive implications for human rights and freedom. As a technological tool that spanned continents, offering near-instantaneous availability of information to people around the globe, the Internet offered a means both of bridging cultural divides and promoting cultural diversity. Its impact to date on the free exchange of ideas could barely be overstated, and it promised even greater benefits to individual users and national Governments alike in the years to come. Unfortunately, expressions of racial animus could also be found amid the wealth of useful information and constructive discussion online. The challenge facing the seminar, as well as the Government of every nation connected to the Internet, was to decide how best to respond. In doing so, it must be recognized that a global computer network meant that content was available to, and located in countries with diverse cultures, especially legal cultures.

13. The starting point for any discussion of the rights of United States citizens, and of the powers (and restrictions) that attached to the United States Government, was the United States Constitution. The First Amendment to the Constitution provided that "Congress shall make no law ... abridging the freedom of speech, or of the press ... ." Through its explicit guarantee of freedom of expression, the First Amendment established a general rule that neither the federal Government nor the governments of the states could criminalize speech (or burden it, as by imposing civil penalties) on the basis of content. Like the Universal Declaration of Human Rights, which also

recognized a right to free expression, the First Amendment proceeded from the understanding that Governments must permit vigorous (and often competing) speech in the "marketplace of ideas". The First Amendment commanded that Government refrain from penalizing one viewpoint at the expense of another. This was the case even where the "exposition of ideas" included expression that the average citizen might find irrational or even repugnant.

14. The animating principle of First Amendment jurisprudence was that such expression would meet with opposing expression - often described succinctly as "more speech" - and that citizens could discern for themselves the truth or falsity of the contending viewpoints. That tolerant attitude to expression found its roots deep in the traditions of humanism itself, which proceeded from the fundamental belief that each person was (and must be) a moral actor. Under that philosophical approach, it was not the role of the State to dictate the views a citizen must hold; rather, each person must exercise his innate capacity for independent reason. As a corollary, however, Government must accept that not every person will arrive at the same judgement.

15. This is precisely the relation in which the First Amendment stood vis-à-vis racist speech, whether it occurred on the Internet or in the physical world. Even where the United States Government found the views expressed to be misguided and repugnant, the Constitution commanded that we neither prohibit nor regulate speech merely "because of disapproval of the ideas expressed". The broad speech guarantee of the First Amendment had been interpreted to extend well beyond the expression of personally held beliefs. In addition, it extended in many cases to speech advocating conduct even when the conduct itself would be illegal.

16. Thus, in the landmark decision in Brandenburg v. Ohio, 395 U.S. 444 (1969), the Supreme Court held unanimously that "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless actions and is likely to incite or produce that action". For similar reasons, racist speech on the Internet - even when it was directed towards a specific victim - was protected by the First Amendment.

17. It was well settled that threats of harm (physical or otherwise) received no First Amendment protection, and this was no less true for threats involving racial epithets or those motivated by racial animus. Thus, a threatening electronic mail message sent to a victim, or even a public announcement (via the World Wide Web) of an intention to commit acts of racially motivated violence could, in many cases, be punished. Even here, however, the Constitution had been construed as requiring that any such punishment be applied only to "true threats". Thus, in Watts v. United States, 394 U.S. 705 (1969), the Supreme Court upheld the constitutionality of a federal law against threatening the President, but in the same case vacated the defendant's conviction as inconsistent with the First Amendment.

18. A similar set of rules applied to speech that descended into harassment. Repeatedly targeting an individual as the focus of harassing "speech" was not a constitutionally protected activity under United States law. However, the

conduct must go beyond speech which simply angered or distressed: it must be sufficiently persistent and pernicious as to inflict (or be motivated by a desire to inflict) substantial emotional or physical harm.

19. In the United States legal tradition, the proper response to racist books was not to ban or burn them; rather, it was to leave open avenues of expression for a diverse array of views, with the knowledge that racist dogma will be soundly rebutted. In that tradition, it is through a clash of views in vigorous debate, and not through government censorship, that equality was well served.

C. Technical aspects of screening racist propaganda on the Internet: national measures

20. At its 4th meeting, on 11 November 1997, Mr. Timothy Jenkins presented his paper on item 3. He said that the elimination of electronic racism required affirmative actions to assure de facto racial equality in the enjoyment of the Internet as well as the prevention of explicit abuses. This was especially required for young people, indigenous people and migrant workers, as set out in General Assembly resolution 51/81 and articles 19 and 27 of the Universal Declaration of Human Rights.

21. The Internet had emerged as the most powerful instrument of mass communication known to man, because it converged print, radio, television, motion pictures, telephony and videoconferencing in one low-cost transnational medium. Because it could operate through wireless as well as telephone lines, it had the potential to reach all points on the surface of the globe. The Internet was rapidly becoming an all-engulfing tool in state-of-the-art education, commerce, news, cultural exchange, entertainment and, soon, government services.

22. However, based on current trends and statistics, the industrialized countries of the North had become the primary beneficiaries of the Internet with the ownership and control of four fifths of all Internet resources. Unless that increasing racial imbalance was reversed, there was a fatal danger that the peoples of the South would become the victims of the Internet rather than its beneficiaries. The Internet had the alarming potential of creating and reinforcing an electronically disenfranchised underclass, which would prevent the improvement of racial equality in a growing range of human and social needs and transactions.

23. To arrest and prevent the trend towards an electronic form of economic and cultural imperialism, massive efforts were required to train, equip and connect disadvantaged people and societies to the Internet, with a special emphasis on youth. Through equal access to the Internet, all people of the earth would be able to tell their own stories to a worldwide audience in their own words, sounds and aesthetic images. With intelligent social engineering, the Internet had the capacity to be a cultural and racial bridge instead of a wedge or barrier. But to accomplish this, geography and income must not be allowed to defeat the beneficial potentials of the Internet. Means must be found to lower the costs for hardware, software and carrier services to enable those with minimal resources and understanding to gain Internet access without the necessity of expensive personal computer and telephone line ownership.

24. Along with damage control to combat explicit racism and discrimination in Internet content, there needed to be a major international mobilization, as a major human rights mandate, that involved all aspects of the international community, including Member States and private industry, as well as non-governmental organizations and educational organizations, in the affirmative promotion of de facto equal Internet access and empowerment.

D. Technical aspects of screening racist propaganda on the Internet: international measures

25. At its 5th meeting, on 12 November 1997, Mr. Eric Lee presented his paper on item 4. He said that an understanding of the basic underlying technology of the Internet was essential, as the technological limitations and the possibilities of the Internet shaped potential public policy options. As Member States and international multilateral organizations pondered such policies, at a minimum those policies must be balanced between rights and legal obligations; be technologically feasible and economically reasonable; and be technologically effective. It was desirable and appropriate for the United Nations and its groups to examine several related questions, one of the most important of which was whether additional restrictions were being considered for the Internet compared to other media and why the Internet should be singled out. Finally, it should also be considered during deliberations that dealing with racist and hate content also set a precedent for other forms of online content, such as discrimination on the basis of gender, religion, national origin and sexual orientation, not to mention political content.

26. Communication on the Internet took many forms. It may be one-to-one: individual private communications such as electronic mail or private Web pages. Many countries protected such mail messages. Communications also took the form of many to many, which were public and involved many contributors and many recipients. Still another mode of Internet communication was one to many, examples of which were the public World Wide Web and Web- or cybercasting.

27. While the Internet was often decribed as a thing or object, it was in reality an abstract - even chaotic - entity. It was a robust and adaptive network in which the intelligence lay at the ends. This was called a client/server model, which could be described as a system in which the user/client using a PC requested information from the computer server, which stored information. Without a request, the networks lying between the user and the content server were dumb and mute. A final important characteristic was that the Internet was organized from the bottom up, with no hierarchical control.

28. Different players had roles in enabling a transmission of information to be made, but the basic taxonomy included two significant sets. These were those on the client side, the most important of whom was the client, or user, operating from a PC, Internet-enabled television or, increasingly, an Internet appliance. At the distant server end were the content owner, Web master, and host. In between were the multiplicity of service providers who had no knowledge of the content. The crucial element was control, and only the client and server had control.

29. Even if there were unanimity about the need to control content, there were myriad ways by which the client and content provider could avoid either detection or, in the long term, removal. These diverse responses arose out of the Internet's architecture and the multitude of applications and services that currently existed. Although content control was difficult, if not impossible, it was still possible for the United Nations to forge positive policies. They included education, early participation in Internet organizations, funding programmes, and encouraging NGO and law enforcement cooperation.

E. Prohibition of racist propaganda on the Internet: juridical aspects, international measures

30. At its 6th meeting, on 12 November 1997, Mr. Agha Shahi presented his paper on item 5. He said that the International Convention on the Elimination of All Forms of Racial Discrimination, which has been ratified or acceded to by 148 States, was the international community's primary legal instrument for combating racial hatred and discrimination. Article 4 of the Convention, as interpreted by the Committee on the Elimination of Racial Discrimination (CERD), stipulated that States parties were required to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.

31. In the opinion of the Committee, the prohibition of the dissemination of all ideas based upon racial superiority or hatred was compatible with the right to freedom of opinion and expression. This right was embodied in article 19 of the Universal Declaration of Human Rights and was recalled in article 5 (d) (viii) of the Convention. Its relevance to article 4 was noted in the article itself. The citizen's exercise of this right carried special duties and responsibilities, specified in article 29, paragraph 2, of the Universal Declaration, among which the obligation not to disseminate racist ideas was of particular importance. The Committee also drew the attention of States parties to article 20, according to which any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence shall be prohibited by law.

32. Article 4 (a) also penalized the financing of racist activities, which the Committee took to include all the activities mentioned, that is to say, activities deriving from ethnic as well as racial differences. The Committee called upon States parties to investigate whether their national law and its implementation met this requirement.

33. In its General Recommendation XV (42) of 17 March 1993, CERD reminded States parties that article 4 was of a mandatory nature and that they had the obligation not only to enact laws to criminalize racial discrimination but also to ensure that the laws were effectively enforced by national tribunals and other State institutions.

34. Article 4 aimed at prevention rather than cure; the law penalized in order to deter racism or racial discrimination as well as activities aimed at their promotion or incitement. In respect of article 4 (b), CERD stressed

that States parties were required to declare illegal and prohibit all organizations as well as organized and other propaganda activities and to punish participation in them; article 4 (c) outlined the obligations of public authorities at all administrative levels, to ensure that they did not promote or incite racial discrimination. The introductory clause to article 4 imposed an obligation to pay "due regard" to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention.

35. Article 5 (d) (viii) and (ix) did not spell out the right to freedom of opinion and expression nor the right to freedom of peaceful assembly and association. The Universal Declaration defined those rights in its articles 19 and 20. Article 29 of the Universal Declaration limits the rights to freedom of opinion and expression and to peaceful assembly and association by meeting the just requirements of morality, public order and the general welfare in a democratic society, not being contrary to the purposes and principles of the United Nations, or implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

36. Dissemination of ideas of racist superiority or the non-prohibition of organization and propaganda activities which promoted and incited racial discrimination were also contrary to article 1, paragraph 3, of the Charter of the United Nations.

37. In article 4 of the Convention, the "due regard" clause made no reference to the provisions of the International Covenant on Civil and Political Rights, as the latter was adopted by the General Assembly a year later. The Covenant translated into precise rules of international law the principles of the Universal Declaration.

38. Articles 19 and 20 of the Covenant spelled out the right of freedom of opinion and expression and the permissible limitations on the exercise of this right. There were also provisions in article 21 on the right of peaceful assembly and limitations thereon corresponding to article 20 of the Universal Declaration.

39. Reservations to or declarations of interpretation of article 4 of the Convention had been made by some 16 State parties, including Austria, France, Germany, Italy, Switzerland and the United Kingdom. They had stated that legislative measures in the fields covered in subparagraphs (a), (b) and (c) of that article were to be adopted only with "due regard" to freedom of opinion and expression and freedom of peaceful assembly and association, and to attain the end specified in the earlier part of article 4. But those reservations failed to pay due regard to the limitations on the rights to the freedoms of expression and association in the Universal Declaration and the International Covenant. As for the declarations of interpretation of those States parties, a member of CERD had noted that they did not constitute reservations and had no legal effect on the obligations under the Convention of the States that made them.

40. The United States had made more far-reaching reservations, stating that nothing in the Convention shall be deemed to require or authorize legislation

or other action by the United States of America incompatible with the Constitution, i.e. incompatible with the extensive protections of individual freedom of speech, expression and association contained therein.

41. The Human Rights Committee, in its decision concerning Communication No. 104/1981 (J.R.T. and the W.G. Party v. Canada) held that article 19, which protected freedom of speech, needed to be interpreted in the light of article 20. A working paper presented to a United Nations seminar on racist propaganda disseminated through computer and electronic networks, held in 1996, noted that it was only in the United States, with its quasi-absolutist conception of freedom of speech, that the regulation of racist speech was held to violate the constitutional right of free speech. Free speech was a constitutional right in Canada and many European countries. Yet the highest courts in those countries had held that provisions which prohibited racial incitement and the dissemination of racist ideas were reasonable and necessary exceptions to the right of free speech. In 1989, for instance, the Canadian Supreme Court upheld Canada's anti-hate speech legislation. Interpretation of freedom of expression involved resort to the values and principles of a free and democratic society.

42. That conclusion was in line with the view of CERD, as well as most of the States parties to the Convention, that the right to freedom of expression was not absolute but subject to certain limitations, i.e. those contained in the Universal Declaration and the International Covenant on Civil and Political Rights, and that those limitations lay in the balance to be struck between the obligations deriving from article 4 of the Convention and the protection of those fundamental freedoms. CERD consistently rejected any construction of "due regard" for freedom of expression as neutralizing the obligation to prohibit and punish dissemination of ideas based on racial superiority or hatred or incitement to racial discrimination or acts of violence.

43. It was clear that from the juridical point of view, the provisions of article 4 (a) and (b) of the Convention were mandatory rules of international law that called for enforcement through competent international tribunals and other State institutions, as laid down in article 6. "Due regard" for the rights to freedom of expression or to freedom of peaceful assembly and association could not be so construed as to justify failure to prohibit or punish over the Internet dissemination of ideas of racial superiority or hatred and all other propaganda activities which promoted and incited racial discrimination or to recognize participation in organizations carrying out such activities as an offence punishable by law; whether such sanctions were to be applied by criminal courts or administrative or regulatory bodies was arguably open to interpretation.

44. Article 4 of the Convention was as much applicable to the dissemination on the Internet of ideas of racial superiority or hatred and other racist propaganda as it was to such offences and illegal acts in the press, radio, television or any other media.

45. While an opinion on racial supremacy held by an individual or a group might be an absolute right, once such an opinion was disseminated, it became an act or behaviour. That behaviour transgressed, just as an act of racial

discrimination, national as well as international law, which called for legal penalties. Most State parties took this position. The case of the United States was sui generis because of the First Amendment which guaranteed virtually absolute freedom of speech.

46. "Chat room" talk on the Internet by persons holding racist convictions could well lead to advocacy of ideas of racial supremacy. Participation in such gatherings could thus be deemed culpable under article 4 (b) of the Convention. The enforcement of the provisions of article 4 and article 6 to ensure remedies to, and reparation for any damage suffered by a victim of racist propaganda or racial discrimination on the Internet, however, presented some technical problems.

47. In the United States, anti-Semitic and racist speech on the Internet was protected by the First Amendment guarantee of freedom of expression. Consequently, material that was treated as illegal in most other democracies, including racist and defamatory statements, could be posted on the Internet in the United States and, as a result, become accessible to virtually everyone around the globe, regardless of existing local laws and morals. As the Supreme Court had noted, while the "chat rooms" and Web sites existed at fixed geographical locations on the Internet, users could transmit and receive messages without revealing anything about their identities, or indeed disguising them.

48. To what extent could democratic Governments regulate the material that passed through the Net? The Internet providers could, if they wished, refuse service. They could also screen content with the aid of technologies that were evolving rapidly. The Economist, in its issue of 19 October 1996, stated: "Governments need to force Internet service providers, many of which will in future be big telephone companies, to take responsibility for what they knowingly carry on their sites".

49. The aim was to penalize racist propaganda on the Internet, not pre-censorship. That in no way implied that racist propaganda should not also be dealt with by monitoring and refutation. Multiple strategies were called for to counter racism and racial discrimination on the Internet.

50. To draw a dividing line between what was to be permitted and what was to be prohibited on the Internet, the relevant provisions of the Universal Declaration and the Covenant, including limitations on the fundamental human rights and freedoms spelled out in them, as well as the provisions of the Convention, in particular its article 4 must be taken into account.

F. Elements relating to conduct and good practice for Internet-based materials

51. At its 7th meeting, on 13 November 1997, Ms. Maya Sooka presented her paper on item 6. She said that the Association for Progressive Communication (APC) was a global network of networks whose mission was to empower and support organizations, social movements and individuals through the use of information and communications technologies, and to build strategic

communities and initiatives for the purpose of making meaningful contributions to human development, social justice, participatory democracies and sustainable societies.

52. Questions on the effectiveness of a code of conduct for the Internet were the following:

Should there be control and regulation of the Internet?

How would restrictions impact on the right to freedom of opinion and expression?

Is control technically feasible? And at what cost?

How would regulation be enforced and by whom?

What resources would be necessary and should these resources not be directed where they would be more effective in extending the use of and access to the Internet?

How effective would regulation be, given the nature of the Internet?

Would there be any conflict with the right to privacy and freedom of association?

What would be the geographical range or ranges of this regulation?

53. The APC recognized that information and communications technology had the potential to facilitate rapid political, economic and social change in the underdeveloped regions of the world. People using the APC networks were involved in a range of sectors including human rights, peace, environmental issues and social justice. Member networks of the APC used information technology to promote a culture of tolerance and cultural diversity on the Internet, to promote freedom of expression and information, and to encourage the publication of materials of historically disadvantaged communities and the production of progressive information.

54. In order to empower and build the capacity of user communities who were marginalized by mainstream Internet developments and in order to tap the full potential of information and communications technology in developing regions, some key issues needed to be addressed. Policy makers at the national and international levels should address the lack and underdevelopment of basic infrastructure in many regions, especially in Africa. There was an under-representation of the South on the Internet and globally, there was gender inequality in terms of access to and control of the Internet.

55. Issues of race, racism and racial discrimination on the Internet should be seen in the broader social context. Disallowing racists a platform in cyberspace was not going to eradicate racism. Global society would be better served by a wider representation of culture, languages and viewpoints on the Internet. The enormous resources that would be required to monitor and regulate the Internet should instead be channelled into building capacity in those regions which were lagging behind in information technology

infrastructure. There should be a commitment from Member States to address this imbalance in the access to information technology between the North and the South. The Internet should be used as a tool to combat racism. Racism and racial discrimination have existed for centuries, long before the advent of the Internet, and racism will only be eradicated through education and the empowerment of disenfranchized communities.

56. At the 7th meeting, on 13 November 1997, Mr. Anthony Rutkowski presented his paper on item 6. He noted that the seminar had begun an initial exploration of the nature of the application of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination to the Internet as one of several applicable media that included, for example, voicemail and fax distribution services on the telephony network infrastructure, and printed and recorded media in the postal system or transport infrastructures. A much better understanding was needed of the nature and degree of: (a) the infrastructures; (b) the undesirable conduct and activities; and (c) the other related groups and actions. The Internet itself was largely irrelevant with respect to undesirable conduct and activities, because it was only an infrastructure. Of concern rather were the activities themselves.

57. The Internet was an abstraction that allowed millions of networks and tens of millions of computers to communicate independently. The end user was both recipient and provider of information. This heterogeneous, autonomous network architecture prevented “internal” controls from being imposed.

58. Because of the technological convergences taking place, future activities of the Office of the High Commissioner for Human Rights should be “media neutral” and consider all media and infrastructures, rather than just the Internet. The Office, with a minimal investment, could usefully employ these technologies and existing private sector services to the benefit of its own mission.

III. SUMMARY OF THE DEBATE

A. Definitions

1. Identifying the Internet

59. The principal characteristics of the Internet were identified by the representative of the Organization for Economic Cooperation and Development (OECD) as follows. The Internet is:

(a) An enormous network of networks;

(b) Decentralized - transmissions were broadcast using multiple links and different routes could be used so that information could be broadcast to a number of locations instantaneously. There was no central control or ownership;

(c) Owned by a variety of government and business interests;

(d) Self-governing and ran on protocols often established by academics with no actual authority to do so;

(e) A non-hierarchical system which allowed information to be disseminated on a one-to-one or a one-to-many basis;

(f) Technologically extremely complex;

(g) Continually changing, especially at the technological level.

2. Benefits of the Internet

60. The representative of the OECD, as well as many other delegates, drew the enormous benefits of the Internet to the attention of the seminar. Some of these can be summarized as follows. The Internet:

(a) Was fast, cheap and simple to use;

(b) Had potential for new kinds of electronic commerce and consumption;

(c) Was a unique mechanism for accessing information which blurred the distinction between information providers and receivers;

(d) Was a great vehicle for the promotion of and respect for cultural diversity. The Internet enabled people from all over the world to communicate instantaneously. However, this also raised the potential for cultural misunderstandings. For example, certain religious content will be contentious and, if not treated delicately and respectfully, could result in disrespect for cultural diversity;

(e) Had great potential for long-term benefits in education, health care, job creation and other areas;

(f) Was seen by some as the great equalizer as it allowed individuals, small businesses and NGOs to operate on the same level as larger entities.

3. Internet users

61. A message provider could broadcast privately to one or a number of receivers through a system such as E-mail. Alternatively, the provider could send a message by public broadcast. In that case, the message would be open to the world at large. Once the message was transmitted, anyone connected to the Internet could choose to seek out and read the material. There were several types of public uses available such as newsgroups, bulletin boards, chat groups, Web pages and others. The content of messages sent privately was generally protected by national privacy laws and was strictly confidential. Those messages did not form the basis for the seminar. Public broadcasts, however, were open to all Internet users to read and were thus not protected as confidential communications.

B. International aspects

1. International Convention for the Elimination of All Forms of Racial Discrimination

62. The Chairman, along with many other participants at the seminar, noted that the purpose of the seminar was to deal with the obligations of States under the provisions of the Convention, particularly its article 4. States parties to the Convention were obliged to undertake measures to eradicate racism and racist propaganda. Consequently, States must take measures to eradicate such material where it appeared on the Internet. The duties of individuals set out in articles 28 and 29 should not be discounted in considering the scope of the freedom of expression. The question of regulation of the Internet had to take into account the whole body of human rights law. This would include giving due consideration to the right to freedom of expression which appears in article 19 of the International Covenant on Civil and Political Rights.

63. The application by States parties of their obligations under the Convention must also be seen in light of their obligations under their respective national constitutions. In the United States, the freedom of expression was protected by the First Amendment to the United States Constitution. There was debate as to how to resolve the conflict between States' obligations under the Convention and the right to freedom of expression. The First Amendment protected the freedom of expression unless it amounted to an incitement to imminent lawless action. The First Amendment did not protect speech which was prohibited under general law, for example defamation or the tort of intentional infliction of emotional harm. The distinction was that the general law related to individuals and not groups. Speech directed against groups would be protected under the First Amendment unless it fell within one of the recognized exceptions. It could be argued that hate speech amounted to a provocation to lawless action, if not in the United States, at least in other States.

64. Certainly, the right to freedom of expression, either constitutionally or under the Covenant, was subject to limitations to protect public morals, the public interest, public order or the rights of others. That should include the repression of criminal acts, such as the dissemination of racist propaganda.

65. The comment was made that although international law restricted certain types of hate speech, it did not restrict all such speech. It was necessary to look at the scope of permissible restrictions under international law. Racist propaganda which subverted the principles of the United Nations or contravened fundamental human rights and freedoms was not permissible. Although the Human Rights Committee had not clarified what type of restrictions would be permissible under the Covenant, it had indicated that it would follow the jurisprudence of the European Court of Human Rights, which had adopted the doctrine known as the “margin of appreciation”. That left some scope to national bodies to determine what material should be restricted in order to protect public order and morals.

66. It was noted that the American Convention on Human Rights and the jurisprudence of the Inter-American Court should not be overlooked as a source for interpreting the provisions of the Covenant. The Inter-American Court's rulings upheld the freedom of expression in line with the rulings of the United States Supreme Court. In the circumstance, there needed to be greater study of the permissible restrictions on the right to freedom of expression under international, regional and national laws before any attempt, nationally or internationally, could be taken to prohibit racist propaganda on the Internet. In particular, regulators should be assured that States would not use their power to control the Internet to further their own political purposes while abusing the fundamental rights of citizens to speak freely.

67. It was noted that consideration of the right to freedom of expression was beyond the mandate of the seminar. Instead, the seminar was meant to find ways and means to use the Internet responsibly in light of States' obligations under the Convention. As racism was clearly illegal under article 4, the seminar should focus on ways of achieving a prohibition of racist propaganda and racial discrimination on the Internet. It was quite clear that the Internet could and was being used irresponsibly. The seminar should therefore turn its attention to ways of locating and prosecuting the perpetrators of racist propaganda.

68. However, freedom of expression could not be discounted at such a seminar, despite its terms of reference. All human rights had to be viewed and balanced in the context of other human rights and these were sometimes in competition. At the same time, undue consideration should not be given to United States law. The seminar was concerned with international law and the international rules of law were not those set down by the United States Supreme Court. International laws were generally to be considered as complementary to national laws although there were, at times, disputes. Many years ago, the International Law Commission stated that constitutional law was not superior to the principles of international law. If there was a discrepancy, a State could always hold a reservation to certain provisions of an international convention. However, the fact that States held reservations to provisions of international conventions could make the world's commitment to human rights merely a formal one.

69. Many countries, certainly most Western European countries, had criminalized racist hate speech and propaganda. The question for those States was not how to balance freedom of expression with other obligations but how to enforce the laws in existence. However, censorship by the State could lead to repressive government. The freedom of expression was paramount and must be respected for democracy to function effectively.

70. It was noted that human rights must be seen as an integrated whole; an international protocol might therefore be necessary to determine whether racist propaganda appearing on the Internet was a crime or should be protected by the freedom of expression. Nevertheless, it would be unfortunate if the freedom of expression were to be given precedence over the right to life.

71. An NGO representative raised the question of whether international law proscribed criminal behaviour undertaken in another country and also commented that international law said nothing to impinge upon the right to receive information.

72. In the context of the debate on freedom of expression and international control of the Internet, it was noted that the Internet did not exist when the Convention and the Covenant were drafted. Governments, nationally and internationally, must show that, while upholding the provisions of the Covenant and the Convention, legislation regulating the Internet would combat the problem of racism; otherwise, there was no point in controls. There had been no discussion regarding the actual consequences of hate sites and the effect of regulation on racist propaganda. The whole debate therefore had been based on speculation. The comment was made, however, that the provisions of international law applied to technologies even if they appeared after the formulation of the relevant principles.

2. International measures

73. A participant raised the following questions to indicate some of the problems involved with regulation of the Internet. If someone were to broadcast racist propaganda from, for example, a satellite, and an international authority wished to prosecute:

(a) How would the action be commenced?

(b) What court would have jurisdiction?

(c) Would there be only one set of proceedings, or would they be recommenced in each country in which the material appeared? Would it be necessary to take into account the doctrine of double jeopardy which prohibited a defendant being tried twice for the same offence?

(d) How would the reprehensible conduct be proved? Could the various Internet messages be admitted into evidence?

(e) How would the author be identified?

(f) How would the matter be handled internationally? Would there be cyber courts, cyber judges and cyber sleuths?

(g) Who would be sentenced? Would it simply be the person responsible for sending the message, or would it also be the service providers? If the service providers were also prosecuted and sentenced, would they be accomplices, or something else?

74. Many participants pointed out that their national parliaments had undertaken national measures to prohibit racist material appearing on the Internet but underlined the fact that the problem must be tackled on an international level as well.

75. It was observed that if the European Union could regulate the driving of lorries from one member State to another, then surely the regional and

international organizations could regulate the Internet by similar agreements. However, national laws prohibiting racist propaganda on the Internet could not pursue criminals to countries such as the United States, where the prohibited speech was protected under the Constitution.

76. The importance of international cooperation was emphasized throughout the seminar. The presentation on behalf of the OECD underlined the inherent international character of the network environment that carried negative material onto the Internet. The fight against Internet crime would continue to be faced with the problem of territoriality.

77. It was suggested that it was necessary to look beyond human rights when considering the regulation of the Internet and include other branches of the law, for example intellectual property. The distribution and trade in content on the Internet naturally had intellectual property implications. The regulation of this flow of information was partly the work of the World Intellectual Property Organization. Many underlined the necessity of pursuing multiple strategies to combat racist propaganda appearing on the Internet.

78. Some warned against censorship and observed that during the present century, most massive discrimination has been committed by States. For example, Governments had censored the press. If the freedom of expression on the Internet was restricted, then people working against States and for freedom and democracy would be prevented from carrying on their struggle.

3. Access

79. The Internet was referred to as the great democratizer or the great equalizer - no matter how powerful or powerless message providers were, their messages had as much potential coverage as any other. That was disputed, however, throughout the seminar. It was recalled that certain sections of society and certain regions of the world did not have access to the Internet; some did not even have access to more basic telecommunications networks. For those people, the existence of the Internet and their exclusion from it exacerbated already existing inequalities.

80. In response to the presentation of Mr. Jenkins, who specifically addressed the problem of access, Mr. Lee argued that statistics did not correspond with the argument that certain groups were being alienated from the Internet. The increased use of the Internet was occurring all over the world. Mr. Jenkins maintained, however, that the Internet was growing in a one-sided way. His concern was that wholesale management of information was closing - Internet companies were becoming more powerful and their control of software was becoming tighter. Who those companies would give a voice to were matters of production and control.

81. It was noted with concern that there were many people currently outside the Internet market. This would have to be addressed, or existing inequalities would be reproduced. A suggestion was made that community centres could be set up where people could have access to computers, thereby facilitating equality of access. The United Nations could be a driving force for such a programme, together with the United Nations Educational, Scientific and Cultural Organization and other international agencies. The seminar

should not forget people living in rural and outlying regions; access to the Internet must be given to everyone everywhere, all rights - economic, social and cultural, not only civil and political - must be respected.

82. Mr. Jenkins emphasized the need not only to increase Internet access to non-white cultures in the world but also to increase material about non-white cultures on the Internet. It was important to provide information about the Internet through other media such as wireless communication, so that people without access to the Internet could be made aware of the Internet's potential and its relevance to their lives.

83. Ms. Sooka observed that when talking about increasing Internet access to the South, basic infrastructure such as telephone lines had to be provided first, before a computer and modem. Once these were achieved, southern cultures could add a whole new source of so far untapped material to the Internet.

84. However, the Internet was arguably being used to victimize indigenous populations, who accounted for some 300-400 million people in the world. The Internet was controlled by transnational companies who only gave indigenous peoples what the companies wanted to give. The indigenous populations had been excluded from the community of nations. It was the responsibility of States to realize how the Internet affected indigenous peoples and to act on their behalf.

C. Regional measures

85. The OECD undertook a study in February 1997 into “Approaches to content on the Internet”. The presentation by Ms. Teresa Peters was a summary of a draft report currently being prepared by the OECD. The report was not restricted to considering the appearance of racism on the Internet, but was more broadly based to look at wider issues of all kinds of illegal, harmful and controversial content. The OECD believed that before specific solutions could be suggested a comprehensive examination of issues must be completed, but was more concerned with information-gathering, an overview of issues relating to content on the Internet, the collation of an inventory of legislation, policy, practices and national approaches of OECD member States, and an overview of private sector initiatives regarding the Internet. The paper concluded with a summary of common issues which Governments took into consideration when drafting policy in this area.

86. According to the study, content issues must be considered in the context of the development of open information and communication networks and the enormous potential for economic growth and social development which they offered. Recognizing that such networks could be used in a harmful way, Governments must balance the concerns of public order and security with the enormous potential offered by information networks.

87. The representative of the Council of Europe, Mr. Rudiger Dossow, outlined the work within the Council of Europe concerning the struggle against racism and intolerance, the promotion of the freedoms of expression and information, and the impact of new communication technologies and services.

88. In order that common standards might be developed in this field, it was desirable to base the work of regulating the Internet on the various existing international human rights instruments and commitments of States, and to coordinate the work undertaken in the various international forums, taking account of their specific mandates, achievements and expertise. Furthermore, while the international community should pursue international legal measures in accordance with the existing international human rights commitments of States, common policy guidelines for positive action at the international and national levels, such as fostering public education and awareness and means of public scrutiny over racist content, as well as voluntary or market-oriented self-regulatory measures by operators, providers and users, should not be neglected.

89. The future work of the Council of Europe in this field will be based on the Declaration and Action Plan adopted upon by the heads of State and Government in Strasbourg in October 1997 and the resolutions, declaration and action plan to be adopted by the fifth European Ministerial Conference on Mass Media Policy to take place in Greece in December 1997.

D. National approaches

90. The representative of Sweden informed the seminar that in October 1997, the Government of Sweden presented the Bill on Responsibility for Electronic Notice-Boards. By “electronic notice-board” the proposed law meant a service for electronic mediation of messages. A message could consist of text, pictures, sound or any other information.

91. The law would not apply to providers of networks or providers of other connections for the transmission of messages, nor to services protected by the Freedom of Press Act or the Freedom of Expression Act or messages intended only for a certain receiver of a fixed group of receivers (e.g. electronic mail).

92. A provider would be obliged to give the users of his service information about his identity and to what extent incoming messages were available to other users. The provider shall be sentenced to pay a fine if he intentionally or through negligence did not give this information.

93. Providers would also be obliged to remove or otherwise prevent continued dissemination of certain categories of messages from their services, for example if an incoming message obviously fell under the provisions in the Criminal Code that deal with incitement to criminal acts, vilification of groups of people, child pornography or the unlawful depiction of violence; messages that obviously fell under the Copyright Law were also included.

94. According to the proposed law, the service supplier shall, in order to be able to fulfil his obligation to stop dissemination, have a reasonable supervision over his service, taking into consideration the scale and the aim of his service. If the provider, intentionally or through gross negligence, did not prevent further dissemination of a message belonging to the categories mentioned above, he shall be sentenced to pay a fine or to imprisonment of not

more than six months or, if the crime was serious, not more than two years. This would not apply if the provider could be sentenced under the Criminal Code or the Copyright Law.

95. Computers and other equipment could be confiscated if called for in order to prevent crime or for other special reasons.

96. The law was proposed to come into force on 1 May 1998.

97. In Sweden, censorship before publication was not allowed and the proposed law would not introduce the practice. Actions concerning criminal speech in electronic notice-boards would only be prosecuted after publication, as was the case with books, films and other traditional media.

98. Providers of electronic notice-boards were not as a rule obliged to screen all incoming messages but if a provider was informed that he was assisting dissemination of the mentioned categories of criminal speech, he must act to prevent further dissemination.

99. Sweden did not support the idea of prior censorship. Sweden was a liberal democracy and upheld the right of freedom of expression. But part of liberalism was protecting the weak and minorities in society. Without a doubt, racist speech affected the life of racial minorities. It was therefore a crime to use such speech in Sweden. This extended to providers where that provider was aware that racist speech was being broadcast over the Internet. Liability under the legislation was not strict. The provider must have had knowledge of the content.

100. Questioned about how it was possible for an Internet Service Provider (ISP) to know whether material was legal, or even if certain material was being broadcast, the representative replied that under Swedish law, the ISP would be obliged to take action only when he or she had knowledge of the offensive conduct. Most cases in Sweden concerned underground servers. It was unlawful, for example, for underground servers to invite racist movements to broadcast.

101. Ms. Guzman identified as one of the main problems facing the implementation of national measures that the hate sites keep moving and continue moving as soon as the authorities detected them. International cooperation was important in that regard, especially between police.

102. Mr. Lee asked what would happen in the case of an ISP providing an E-mail service. The representative replied that the legislation did not apply to private transmissions. The ISP would be forbidden to access the E-mail messages because of the privacy laws, and a government authority would need a court order before access could be given. If an ISP was held liable for the content on the server, then E-mail content also would become contentious. While some services might give themselves away by their names, this was generally not the case.

103. Ms. Guzman described an initiative of the Canadian Human Rights Commission, which had convened to hear complaints against specific Internet Websites. According to a press release issued by the Commission on

3 October 1997, this was the first time a human rights tribunal considered complaints of hate messages on the Internet. The Toronto Mayor's Committee on Community and Race Relations and Sabina Citron, of Toronto, had filed complaints against Mr. Ernst Zundel, alleging that material found on his Website was anti-Semitic. The Commission's lawyer maintained that if the victim of hate was a Canadian citizen, then it could be considered a violation of Canada's Human Rights Act. The lawyer for Mr. Zundel said the Website was run by an American citizen and argued that the tribunal did not have the right to rule on Website content. He believed that the Canadian authorities had jurisdiction over the telephone system, but not the Internet. A lawyer for B'nai Brith said that it was a groundbreaking case exploring uncharted territory; he saw no reason why Canadian law could not be applied to this new form of communication.

104. The prosecution of hate speech crimes on the Internet could be problematic. One problem was the identification of the defendant. An Internet user could play a number of roles at any one time. The user could receive a message but might then rebroadcast it to others and so be the receiver and the provider at the same time. A user might be sent an unsolicited message. The responsibility of a provider changed with the role that was being played. The question became: How much control did the provider have over the message his or her service was providing? It was necessary to consider whether the authors of hate speech messages were to be subject to criminal or civil prosecution. Mr. Rutkowski observed that as the technology changed, new roles for service providers and users were being constantly created.

105. If providers were to be held liable under national legislation for the content on their services, the provider would have to monitor material constantly. This would be both onerous and expensive. The address of a newsgroup, for example, did not always indicate that the site is racist; racist propaganda could be found on sites completely unrelated to racism. Once a provider discovered hate speech on a site, it was not always clear whether the material was provided for reasons of propagating racism or fighting it, as was the case with a journalist who had broadcast hate speech as part of a piece of investigative journalism.

106. The OECD representative indicated the importance of recognizing the difference between content which was illegal and information which was harmful or controversial. Generally, illegal content referred to any transmission which was contrary to law. That definition became difficult to maintain in the international context where there were often discrepancies between laws. The OECD study defined illegal content as content contrary to civil or criminal law. This included sexually explicit, abusive, seditious, terrorist or hate material or communication of false, misleading or fraudulent material. Harmful content was content considered detrimental, particularly to children. Harmful content was reflected in community and cultural standards, and internationally these are not always held in common. Further, there was a grey area in the international contest where certain content which might be considered illegal or harmful under some national laws was not under others.

107. Another problem was actually locating the author of a message, which was not always possible. Ms. Guzman had been sent death threats over the Internet

in the United Kingdom when working on a project concerning Northern Ireland. When approached, Scotland Yard said it was not possible to trace the origin of the threats. Mr. Rutkowski noted that even if one could locate the address of a message, it was not always possible to locate the author physically.

E. Technical solutions

1. Filtering and blocking

108. The OECD representative introduced some aspects of filtering technologies which could be used to block unwanted content on the Internet. Filtering technology provided mechanisms for creating “labels” which indicated specific aspects about content. The content was read by filtering software which gave information about the content at a specific date. Users could choose what type of content would be blocked. Another method was for software companies to create lists of sites according to taste. Filtering technology was particularly useful for parents who wished to have some influence over the content viewed by their children.

109. A criticism of filtering using software was that artificial intelligence was judging what material was suitable for the user. Consequently, there was great room for error. For example, a site for breast cancer had been considered pornographic. Filtering might therefore restrict legitimate material as well as unwanted material. Also, using computer software to block or filter access to certain material adds nothing to the fight against racism. It merely makes minorities lock themselves in by filtering out information which was being freely disseminated elsewhere.

110. According to a report of the Australian Broadcasting Authority (ABA), entitled “Investigation into the Content of On-Line Services”, many producers of filter software felt that the software, combined with parental supervision, could address concerns about the protection of children. The ABA was of the view that existing filter software could provide parents and other supervisors with a degree of control over children's use of online services. However, filter software could also restrict access to valuable material.

2. Tagging and labelling

111. According to Mr. Jenkins, tagging was a method of identifying sites in order to rate them. An electronic signal would come up on the screen indicating the type of content on a particular site before the site was opened or a message read.

112. In response to the question of who would do the labelling, Mr. Jenkins suggested that it should be the business of the Human Rights Commission. Alternatively, he suggested that a panel of experts could be appointed. At the moment, the system was being run by the Internet companies themselves and, in the opinion of Mr. Jenkins, the system was flawed. It was noted that although it would be an enormous amount of work to label all the sites on the Internet, it should be the business of the United Nations human rights system, as opposed to private organizations, to supervise the system by establishing a central authority involving a balanced participation of Governments and individuals.

113. There are currently organizations which monitor content for reasons other than labelling. To monitor the whole Internet would require enormous resources, but the use of search engines would keep the costs to a minimum.

114. One problem with a labelling system was identified by Mr. Rutkowski, who noted that maintaining a system of labelling was problematic as people updated their sites continually. If Governments got involved in a system of labelling, there was a risk of censorship. Mr. Lee was particularly opposed to the establishment of a labelling system by the State.

115. Leaving regulation of the Internet to private industry was not without its problems. The State was better equipped to deal with such things as racism. While labelling and filtering were clearly possible ways to prohibit racist propaganda, international cooperation was mandatory if they were to succeed.

3. Anonymity

116. One way to help prevent racist propaganda on the Internet would be to introduce a system of mandatory signatures which would identify the origin of messages. A number of countries were looking at this type of system, the most likely being the establishment of a system of domain names which would have to be registered with a public authority, like telephone numbers. A problem with domain names would be that a user could forward a message to another site and send it from there. In this way, national laws could be circumvented as the message would seem to be coming from another, innocent user.

117. Caution was urged with regard to restricting the use of anonymity on the Internet. In some countries, the anonymity of the Internet was the only way to criticize the Government. If that anonymity were lost, Governments could trace dissidents and restrict their freedom of expression.

118. Mr. Reitinger noted that any move to restrict anonymity would have constitutional implications in the United States and might be contrary to privacy legislation in other States.

4. General

119. It was generally agreed that it was essential to understand the technology of the Internet before any decision was made if and how to regulate it. Mr. Lee pointed out that the enemy was racism on the Internet, not the Internet itself, and he warned against fearing technology.

120. Mr. Shahi, however, noted that although it was important to address the technical aspects of the Internet, its social aspects should not be ignored. He suggested that racism on the Internet could affect the friendly relations between States. It was the job of the United Nations to maintain those friendly relations in spite of technical difficulties.

121. Mr. Rutkowski questioned the relevance of friendly relations between States with regard to racist propaganda on the Internet. Mr. Reitinger mentioned that as the Internet allowed unprecedented communication between people, it could only improve relations between nations.

122. The majority of the participants accepted that national and international laws had to be applied consistently and the nature of the Internet as a medium should not alter this, even if technology made the task difficult. However, the nature of the medium did affect the approaches that should be taken to prohibit racial propaganda. In prohibiting racist speech, other voices might suffer: the same tools used to prohibit racism on the Internet might be used by a totalitarian Government to block or control dissenting speech.

F. Education

123. Education could be focused on users, especially children. Internet education should be taken to schools so that children could be educated about racism and its effects. The Internet could be used as a tool for the advancement of social justice throughout the world and also as a means to understand cultural diversity. Ms. Guzman noted that children all over the world could communicate and learn about cultures different from their own. Education was important as it would encourage individual empowerment through free expression. Banning racist propaganda might detract from this.

124. Education against racism should be promoted as it was an option which was immediately enforceable, whereas the other options discussed would all take a considerable amount of time to implement.

125. Both the representative of the OECD and the representative of the Council of Europe were very supportive of the implementation of education programmes. The former noted that there was strong concern in OECD countries that users should be empowered with tools to protect themselves from unwanted content and that excessive government influence should be avoided in relation to the Internet. Technical solutions and education would allow the free flow of information on the Internet to continue. The OECD report observed that education was highlighted by most national measures. Education referred not only to an understanding of content issues, but also to computer literacy generally. Education at the national level could include measures such as:

(a) Raising public awareness about Internet content and the Internet generally;

(b) The promotion of responsible use of the Internet;

(c) Educating users in ways to protect themselves from illegal, harmful or controversial content;

(d) Educating users in relation to the legal framework of the Internet;

(e) Educating system operators so as to prevent illegal communications;

(f) Advising policy makers.

126. The ABA report commented that parents and carers would play an important role in managing the use of online services by children. The ABA was encouraged by research that confirmed the positive supervisory role that parents played in relation to electronic media. Progress had been made in the educational sector to ensure that children benefited from the introduction of online services, including the implementation of effective strategies for limiting access to controversial material. Parents also wanted their children to benefit from online services, but might not be well informed about the technology. The ABA recommended a community education campaign to support those responsible for children's use of online services.

127. Ms. Guzman emphasized the importance of the Internet as a tool of the human rights community. There were some 150 groups working on racism and related issues such as migration and children's rights. Those groups were important in informing the human rights community about current issues as well as informing the public generally about human rights.

128. Mr. Jenkins underlined the importance of a United Nations Website as a tool for education. The representative of the Department of Public Information explained that the Department had already established a pilot project which had been visited by over 5 million users in some 120 countries. The importance of providing the service in languages other than English was raised. The representative of the Department noted that the Website was also in French and would shortly be provided in Spanish. The Website included a lot of information on racial discrimination as well as: the full text of documents of United Nations organizations; daily press releases; the full text of treaties; and United Nations reports. A search for "racial discrimination" on the Website would immediately come up with some 400 documents.

129. Mr. Jenkins also suggested the possibility of establishing a United Nations advocacy centre which could receive complaints about racist propaganda appearing on the Internet. The Centre would also have an educative role. A representative of OHCHR noted that the OHCHR Website already contained information about United Nations complaints procedures.

130. Several participants stressed that education should not be seen as an alternative to enforcing legislation: the two were complementary. The proportion of hate sites to beneficial material on the Internet was very slight, but democratic standards must be upheld and education and enforcement of legislation were the means to achieve this. No matter how small the number of hate sites on the Internet was, they must be combated.

G. Self-regulation and a code of conduct

131. The establishment of a code of conduct for service providers and users had been considered by some countries as a measure to allow self-regulation of the Internet and to prevent the transmission of controversial material.

132. On the international level, the question whether a code of conduct would actually help in the fight against racism was raised. Who would draft the code? How would it be established? How would its legitimacy be enforced? Further, would the code be for all users or just ISPs?

133. It would not be advisable for the State to get involved in drafting a code of conduct. In most countries, racist propaganda was outlawed and it was therefore difficult to see the relevance of a code of conduct to those transmissions; the prosecution of criminals should be targeted, not the Internet.

134. The representative of the ITU suggested that the ITU should have the task of establishing a code of conduct as it was an intergovernmental organization which had successfully brought together the public and private sectors before. Mr. Rutkowski warned against letting a technical organization deal with economic policy and jurisdictional issues. The ITU representative responded that the ITU was not a static organization and the member States of the agency could decide on its appropriate functions.

135. One participant suggested that a panel of experts should draft a code of conduct. They would have to be chosen with caution, and States which restricted the freedom of expression of its citizens should not be involved.

136. It was queried whether the code would have a legal or ethical character, or a combination of the two. The issue was not merely a technical one; it was also a question of political will. A code of conduct could be drawn up and put before the Commission on Human Rights. It was suggested, however, that an alternative to a code of conduct would be the enforcement of existing national and international laws.

H. Financial implications

137. Regulation of the Internet would be costly, both in terms of time and resources. This raised the question of whether it was possible. Many participants agreed with Mr. Shahi that States had obligations under the Convention which they had to observe, however costly, and that it was not up to ISPs to make a stand.

138. Several participants warned that the funding crisis at the United Nations would restrict measures that the United Nations could take. For example, Mr. Jenkins's suggestions for expanding the United Nations Website or for a United Nations advocacy centre would need additional funding. The current DPI Website had been achieved without funding as it was considered only as a project and not an official activity.

139. Mr. Jenkins suggested that funding could be sought from the private sector. ISPs could pay a percentage of their profits to support projects that fought racism or increased access to the Internet for under-serviced regions. Similarly, educational, religious and philanthropic societies had responsibilities to set up such programmes. Another avenue would be to seek funding for projects improving access to the Internet from the commercial world generally which would only benefit from increased access to the Internet.

140. When it came to funding, certain strategies for the Internet must be given precedence over others. The question must be asked whether it would be better to spend money on establishing a code of conduct or improving access to

the Internet to regions which needed it. If enforcing legislation was costly, then laws would be difficult to follow up with prosecutions. The laws would therefore be applied arbitrarily.

141. Some participants held that racist propaganda on the Internet was minimal, and the amounts necessary to fight it were completely out of proportion to its effects. This was strongly refuted by others. Enforcement of criminal laws was not about the quantity of the material but about the quality. Even one site with hate material could have highly detrimental effects on the community.

I. The effects of excessive control

142. Many participants warned that excessive control of the Internet could damage its potential for good. The ITU representative noted that although he was against racist propaganda on the Internet, participants at the seminar should bear in mind the enormous positive contributions of the Internet and telecommunications. Similarly, the representative of the OECD stated that there was a recognition and a great concern among its member States regarding negative material on the Internet, but that the benefits of the Internet far outweighed the impact of the negative material. The negative aspects had to be put into the context of the enormous possibilities for economic and social development made possible by the Internet.

143. The capacity of the Internet as an exceptional tool for distance learning was emphasized. Over-regulation could detract from its use in this area.

144. The purpose of the seminar had been to talk about racism on the Internet and the application of the provisions of the Convention in that context; it was not concerned with the potential of the Internet in the area of international commerce. The question before the seminar was really what should be done about the negative material on the Internet. It was noted that the highest importance should be attached to respect for human rights. No doubt there were enormous benefits to be derived from the Internet, but the Internet had been around for only 10 years. It is not too late to correct mistakes already made and to maintain commitment to the principles and provisions of the Convention.

IV. CONCLUSIONS AND RECOMMENDATIONS OF THE SEMINAR

145. The seminar deeply regrets and strongly condemns the Internet being used by some groups and persons to promote racist and hate speech in violation of international law.

Proposal to establish an intergovernmental working group

146. It was suggested that an open-ended intergovernmental working group be established to draft guidelines for the ethical use of the Internet. This would lead to the establishment of an intergovernmental group of experts which would use the working group's findings as the basis of its work to establish a set of guidelines for the Internet. Prior to this, the Commission on Human Rights should expressly define the status and the mandate of the group.

147. In the event of the Commission establishing such a working group, consideration should be given to the inclusion of representatives of human rights organizations, bodies, mechanisms and technical experts.

Establishment of a consultative group

148. Due to the complexity of the role of Internet, it was suggested that the Commission on Human Rights consider the creation of a consultative group with a view to preparing a report in the framework of the World Conference on Racism and Racial Discrimination, Xenophobia and Related Intolerance. This consultative group should work in consultation with non-governmental organizations.

Code of conduct

149. The seminar discussed the formulation of a code of conduct for Internet users and service providers. It was noted that in order to establish the legitimacy of the code, it would be necessary first to clarify:

(a) Who would establish the code;

(b) How the code would be established.

150. A code of conduct could either be drawn up by private industry, and would be the subject of community consultation and eventual registration with a public body, or by a drafting committee including official representatives of States, provided they do not restrict the freedom of expression of its citizens, or finally by a centre under the auspices of the United Nations.

Strengthening the United Nations Internet Websites

151. The United Nations Websites, particularly that of the Office of the High Commissioner for Human Rights, should be used as a vehicle for aiding under-resourced populations (which, it was noted, are usually non-white populations) through education in human rights. However, the representatives of the Department of Public Information and the Office of the High Commissioner for Human Rights submitted that any proposal regarding the United Nations Websites should include a recommendation regarding funding for additional activities.

Anonymous and unauthenticated Internet communications

152. It was proposed that all Internet communications indicate their source so that users could not anonymously distribute racist propaganda.

153. Although the importance of accountability in fighting racism was noted, concerns were raised about this proposal, including risks for privacy, free expression and human rights activity.

Tagging and filtering

154. There was a debate in relation to the use of the characterization of content on the Internet, known as tagging, and the blocking or challenging of content, known as filtering, as a means for preventing or restricting racist propaganda on the Internet.

Action to be taken by the Committee on the Elimination Racial Discrimination

155. The seminar recommended that CERD, in examining States parties' reports, should include references to the Internet.

Education

156. The seminar recommended that the Internet should be used as an educative tool to combat racist propaganda, prevent racist doctrines and practices and promote mutual understanding.

Ways of increasing access to the Internet for under-resourced areas should be promoted

157. The seminar recommended that the relevant United Nations bodies and specialized agencies and international and non-government organisations address the issue of access to the Internet within and among nations.

The role of existing national criminal law

158. Existing national criminal laws established to fight racism and racial discrimination should be amended where necessary so as to apply to the Internet. This would include the prosecution of Internet service providers where that was possible under those laws.

Final remarks

159. The seminar recommended that States Members of the United Nations continue their cooperation and establish international juridical measures in compliance with their obligations under international law, especially the International Committee for the Elimination of Racial Discrimination to prohibit racism on the Internet while respecting individual rights such as freedom of speech. This would be an important contribution to preparations for the World Conference on Racism and Racial Discrimination, Xenophobia and Related Intolerance.

Annex

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