

**HATE SPEECH FROM THE STREET TO CYBER-SPACE:
CASES AND POLICIES IN CONTEXTS
“Panel of Diplomats”**

**SPEECH BY AMBASSADOR YUSUF BULUÇ
PERMANENT REPRESENTATIVE OF TURKEY TO THE OSCE**

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Dear Colleagues,
Distinguished Participants,

Thanks to Miklos Haraszti and Central European University for organizing this Conference and the Panel on the topical issue of hate speech.

Mr. Haraszti's letter of introduction of the objectives of the conference invited us to address the question whether the free-speech debate about printing the Prophet cartoons re-contextualize hate-speech. We are also invited to design our presentation so as to contribute to an outcome of our discussions that is hoped to assist the OSCE and other intergovernmental and non-governmental organizations in their efforts to develop a broader political consensus on the issues related to hate-speech.

In order to chart your course to a predetermined destination you have to know where you are. Put in a different way, before we develop a broader political consensus on hate speech we need to have one. My experience at the OSCE and my knowledge about the developments in the UN or elsewhere lead me to conclude that there is neither sufficient collective political will nor much prospect for a consensus to reconcile freedom of speech with other attributes of a democratic society, in particular respect for cultural and religious diversity, and thus ensure their enduring complementarity. Therefore, while a healthy debate may continue to flourish in the academia, but alas in the intergovernmental human rights network, existing body of international standards and principles regarding freedom of expression are seen to be sufficient and regulating hate speech remains to be a quasi taboo.

Nevertheless, international standards and principles just like national laws are subject to scrutiny and review by their parties and adherents with a view to identifying and filling the gaps, where they exist, particularly in light of new developments as a function of societal and political dynamics. For example, developing a normative framework, which weighs freedom of expression in relation to freedom of religion and belief, may be useful. I sincerely hope that discussions yesterday and today will make an input for a better understanding of various approaches to hate speech as well as possible public policy guidelines and tools to deal with it. I myself have benefited a lot by listening to Mr. Robert Post's keynote speech yesterday and the ensuing discussion.

What are the new developments that may re-contextualize hate-speech and redesign a concept for its regulation?

Considering that there are various definitions of hate speech depending on national experience and that international law accords margins and latitude to States to regulate hate speech, the context in which hate speech takes place as well as its consequences which could potentially - may I underline "potential" as distinct from "clear and present" - harm groups or individuals become very important in determining the level of proportionality to regulate hate speech. By the way, historical evidence indicates that when danger posed by hate speech is "clear and present", it may have been too late to deal with its consequences.

Now let's look at the developments and factors that result in an evolving context:

- Firstly, with the advent of the information society and globalized media both in terms of corporate ownership and readership, hate speech has also become globalized. That introduces a new and much larger context, necessitating a sense of greater responsibility and application of a finite judgment, not confined to a national context or territory. We are sharply reminded of this phenomenon lately that the physical distance between Copenhagen and Kabul has severely shrunk.

- Secondly, since 9/11, race, gender and ethnicity have been largely replaced by religion and culture, as the most common bases for hate speech. Public discourse has been contaminated by the perceived religious threat allegedly posed by the “enemies within” not only against the physical safety of liberal and democratic societies but also against the values they cherish. Self-declared “cultural warriors” use thoughts to attack the perceived enemy in order to challenge the climate of intellectual submission and fear. They deliberately shock, offend or disturb the public opinion by portraying the enemy and its irreconcilable and hostile values. Unfortunately, the use of stereotypes and labeling that insult deep-rooted religious feelings do not contribute to the creation of an environment conducive to constructive and peaceful dialogue among different communities. Such dialogue has become all the more necessary as societies have become more diverse and access to information more global.
- Thirdly, one should also think in terms of the possible consequences of allowing hate speech in a certain context particularly in times of heightened sensitivities and inter-communal polarization. Under these circumstances, the impact of ideas, acts or manifestations that are offensive, degrading or provocative against certain groups is qualitatively different simply because they feed into and reinforce already existing misperceptions, grievances and marginalization, thereby increasing rather than decreasing fear.

So the context and the possible consequences, which potentially harm social coherence and harmony, are extremely important. In a society where racist and xenophobic elements in public discourse have almost become of mainstream, the line to be drawn between free speech and hate speech becomes even more important and consequently grey areas less affordable politically. Hate speech, if not checked can unleash violent conflict, and historically has proven its capacity to trigger genocides.

Now the question is who should draw the line?

The case-law of the European Court of Human Rights indicates that there are indeed limits to freedom of expression as reflected in several judgments, such as incitement

to hatred, incitement which could generate violence or blasphemous publications offending religious feelings. However, the Courts assessment is always made in regard to a State's specific interference with the right to freedom of expression. Therefore, as the Danish Director of Public Prosecutions stated in his decision on "Prophet Cartoons", "*it is not possible from the case-law of the Court to infer a certain state of law regarding how the Court would weigh the regard for freedom of expression in relation to expressions that can offend religious feelings.*" This statement, I believe, constitutes a testimony to the fact that there is a gap in European case-law on how to deal with instances in which states do not interfere to resolve cases of conflict between freedom of expression and "rights of others", in particular the right to respect for one's religious feelings. The Court, in its judgment in *Wingrove vs. UK*, established that "*a wider margin of appreciation is generally available to the contracting States when regulating the freedom of expression in relation to matters liable to defend intimate, personal convictions within the sphere of morals or, especially religion*". So the question is what if a State is reluctant or unable to fulfil its positive obligation to holders of religious beliefs under law because of its political or legal traditions and circumstances?

In light of the foregoing, drawing the line requires fine judgments both by the lawmakers and the courts. When striking the right balance, careful consideration should be given to extending the same protection to all communities from incitement to hatred and blasphemy against their religion¹. This is a crucial requirement for a just and inclusive society. The victims of hate speech may interpret indifference of the authorities as tacit approval of their denigration. This in turn would seriously jeopardize their sense of justice, thereby weakening their allegiance to the society in which they live and undermine the grounds and urgency for their integration.

¹ Although hate speech and blasphemy are two different concepts, there are overlaps between them in practice. Vilification of religious beliefs may sometimes be related to incitement to hatred. A hate speech may denounce particular beliefs and give this as a reason for hatred. Therefore, protection against blasphemy is equally needed for all faith communities coexisting in increasingly plural societies. The European Court of Human Rights, reasoning along the same lines in Otto Preminger Institut v. Austria, considered that "... *respect for religious feelings of believers ... can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration and such portrayals ... can be regarded as malicious violation of the spirit of tolerance which must also be a feature of a democratic society...*".

Regardless of whether or not hate speech is regulated, acts and manifestations of hate should be countered by a timely and responsible public discourse that rejects hate and promotes mutual respect and understanding. Political leadership is particularly required to lead this kind of public discourse. On the other hand, public authorities have a special responsibility to refrain from statements, in particular in media, which may reasonably be understood as hate speech.

To facilitate political leadership's response to hate speech, we believe that there is a need for early warning about serious acts and manifestations of hate in public discourse. I would like to suggest that national agencies and international institutions with competence and expertise on hate speech should develop their early warning capacities and report to governments or parliaments of the countries concerned on hate speech. Civil society and victims of hate speech should also be mobilized to combat this evil.

Hate speech is a complex phenomenon and it would be insufficient to address this problem with merely legal or political measures. Hate speech is only one type of manifestation of intolerance. Intolerance has deep roots in society. Therefore, human rights and tolerance education, which promotes respect for inherent dignity of all human beings as well as for cultural and religious diversity, is essential. Media professionalism and responsibility should also be promoted by the media itself.

This leads me to my closing remark which I should emphatically make: Without laws that provide different groups with equal protection from hate speech or blasphemy against their religions, all the other measures would be of questionable effectiveness, and sense of justice and loyalty that is required for democratic legitimacy would be that much harder to achieve.

In a nutshell, Martin Luther King said in 1965 what I had to say today: *“Morality cannot be legislated, but behavior can be regulated. Laws may not change hearts, but they can restrain the heartless...”*

Thank you.