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FREEDOM OF EXPRESSION IN THE INFORMATION SOCIETY

FINAL REPORT

INTERNATIONAL SYMPOSIUM

**organized by
the French National Commission for UNESCO
in partnership with UNESCO**

with the support of the Intergovernmental Agency of the Francophonie, the
Principality of Monaco, the French Ministry for Foreign Affairs and the French
Ministry of Culture and Communication

and with the participation of the Internet Rights Forum in setting up the
preparatory discussion forum

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PRESENTATION OF THE SYMPOSIUM

The French National Commission for UNESCO's decision to organize an international meeting on "Freedom of expression in the information society" in partnership with UNESCO is placed within the perspective of the World Summit on the Information Society (WSIS), the first phase of which is to take place in December, 2003, in Geneva.

Organised by the International Telecommunications Union (ITU), in association with all the other relevant United Nations agencies, the World Summit aims at launching a thorough reflection at international level on the stakes of the XXIst century emergent information society. More particularly its main purpose will be to define a joint strategic vision and a concerted plan of action with a view to exploiting the extraordinary potentialities of ICTs for the profit of all.

The promotion of the free circulation of ideas and knowledge is one of the UNESCO's basic missions. Accordingly, UNESCO plays a central part in the preparation of the WSIS stressing more specifically on the ethical, legal and sociocultural aspects, promoting in priority freedom of expression, the universal access to cyberspace, the expression of cultural and linguistic diversity and the reduction of the digital divide.

The purpose of the meeting was to provide experts, professionals, representatives of non-governmental organisations and governmental and regulatory agencies from all regions of the world with an opportunity to identify all the issues posed by freedom of expression on a global basis and, further to open debates, to define key elements for the definition of basic principles and proposals for concrete actions which are the expected output of WSIS.¹

The meeting comprised three round-tables each dealing with one of the three main issues.

Round-table 1 focused on the new possibilities and limitations offered by cyberspace with regard to freedom of expression, in terms of the exercise of this basic right as provided in Article 19 of the Universal Declaration of Human Rights, in terms of the development and reinforcement of participatory democracy and the world civil society and finally in terms of the promotion of pluralism, cultural and linguistic diversity and creativity.

Round-table 2 looked at all the obstacles limiting the exercise of freedom of expression in cyberspace, whether direct (censorship) or indirect (lack of access to ICTs or information), and at possible remedies.

Round-table 3 tackled the issue of the regulation of contents in cyberspace. It consisted in pondering over the global, internormative, co-operative and international strategy to be defined, in order to fight against cybercriminality, preserve freedom of expression and protect all individual and collective rights in cyberspace.

In order to give all netusers world-wide an opportunity to take part in the debate, an online discussion forum on the above topics had also been set up from 9 September to 21 October, 2002, (<http://www.foruminternet.org>). The conclusions of the preparatory forum,

¹ Last October 25, 2002, in Toronto, the Canadian Commission for UNESCO organized a round-table on freedom of expression in cyberspace aimed at obtaining the opinions of Canadian experts in preparation for the international symposium organized by the French National Commission for UNESCO November 15-16, 2002, in Paris.

managed by the *Forum des droits sur l'Internet* (Internet Rights Forum)² and jointly animated by eminent international specialists, were presented at the meeting.

The papers of the participants in the round-tables as well as those presented at the opening and closing sessions are available on the web sites

- of the French National Commission for UNESCO : www.unesco.org/comnat/france
- and of UNESCO, on the pages concerning the preparation of the World Summit on the Information Society : www.unesco.org/wsis

The report was presented at the meeting by Mr Daniel Malbert (French Ministry of Culture and Communication), general rapporteur, and finalised with the assistance of Mr Jean-Gabriel Mastrangelo (UNESCO) and Mrs Catherine Souyri (French National Commission for UNESCO).

² The purpose of this French association is to foster permanent dialogue and reflexion between private and public stakeholders on the harmonious development of cyberspace rules and uses. Thus it takes part in the co-regulation of the internet.

INTRODUCTION

In a context characterized by crises in the sectors of the information and communication technologies, which have led to general scepticism, and with fears fed by opinion campaigns which have emphasized slides in behaviour and expression on the internet, the symposium stressed that there had been several attempts to return to censorship, not only in the countries of the south and in developing countries, but also in northern countries. Democracies, tempted for security reasons to restrict freedom of expression, in doing so risk setting a bad example, or even appearing to condone authoritarian regimes. Contrary to many generally accepted ideas, contributions to the meeting clearly pointed out the absence of any political or cultural gap between north and south: on this subject the split transcends distinctions between democracies and authoritarian regimes, and the defence of democratic values must be regarded as of concern to all.

Obstacles to freedom of expression depend in part on economic, cultural and technical factors. Optimal use of new means of communication, with all the exceptional potential they have to offer, must work together with legal practices and national laws which are still extremely different from each other, with highly diverse philosophies and approaches in terms of the balance between freedom, responsibility and control.

Moreover, analysis of the role played by the numerous normative instruments and by regulatory authorities in the information society underlines the attractiveness of – and indeed, the need for – an ambitious global solution which can bring together all the actors concerned at the international level, with the aim of guaranteeing freedom of expression in the information society.

PROPOSALS

1. Concerning access to technologies

We must encourage partnerships between the public and private sectors in order to facilitate access for all to ITCs and the internet, at affordable prices.

We must call on the private sector to do something about **unused capacity on satellite transmission lines**. If this excess capacity were offered to developing countries at preferential rates, it would allow them rapid access to means of connecting to the network.

Communication technologies which are complementary to the internet must be harnessed together: multi-media centres using radio make it possible to produce and propagate information gradually, and to provide bottom-up feedback.

2. Concerning access to content

We must reinforce our efforts to **broaden the range of languages available on the internet** (whether by setting up multilingual electronic dictionaries, adapting forms of writing, developing translation aids, etc.)

Similarly, we must promote **participation in and the satisfaction of intercommunication needs** at local level, using **local applications and content**.

Applications need to be better adapted to the social, economic and cultural needs of users, by making better use of resources such as **images, icons, a new language and a new, more intuitive logic** for accessing information. The use of the MPEG 7 and MPEG 21 standards will constitute a priority task in this connection. The ability to write should not be the sole mode of expression and access to information. Accessibility should be based on the complementarity between various information vectors such as text, images and sounds, exploiting new ways of presenting and structuring content.

The **architecture** of the internet must also be considered. Proper development of services and applications, in particular in the area of multimedia, require rapid deployment of the **IPV6 protocol**, while observing its impact on all actors – sovereign States, the private sector and civil society, as has recently been proposed by the Council of Europe.

Finally, it is essential to make public authorities and decision-makers aware of the **cultural and social dimension of the internet**, beyond its purely technical aspects. It is thus necessary to make training a priority, and to aim at participation by all, by adapting tools and content to a wide range of publics. A particular effort is needed to enable more women to take part in the information society.

3. Concerning political decision-making

It is of primary importance to avoid any privatization of censorship. We must restore to governments their role in the organization and respect of public freedoms. To guarantee the freedom of the press and to protect traditional media emerge as clear priorities.

The principle of **technological neutrality** needs to be universally recognized: the mere act of transmitting content does not in principle commit the responsibility of technical intermediaries or

website hosts as regards content. Creating internet sites should not be subjected to **licensing or prior authorization**.

We must also promote the **development of an offering of publicly accessible content** in the areas of culture, research and science, by guaranteeing access to content and works in the public domain, and by encouraging voluntarist policies to make available the content deemed essential to participation in democratic life at the international level.

4. Concerning international co-operation

The **participation of developing countries in decision-making bodies concerning the internet** (e.g. on **standards, norms, regulation, domain names** etc.) and in **exchange, intellectual property and copyright questions** must be sustained.

We must also work to set up a **forum for international co-operation** enabling discussions **open to all actors** on questions of standards, regulation and good conduct, in association with various existing forums and those currently being created, (extended to include organizations such as UNITAR, or the Law and Cyberspace association in Africa, etc.) This forum could be assigned the mission of **organizing thinking on the relationship between freedom of expression and legal instruments, and forms of regulation** (self-regulation, co-regulation), and finally it could be a **source of ideas** for governments, international organizations and all Internet actors.

But the first stage, for this international co-operation to become a reality, is **inclusion of freedom of expression on the list of subjects for the World Summit** on the information society. The Summit will be a unique opportunity to pose all the questions that this symposium has identified, and to build a consensus around the proposals formulated. To do this, it is imperative that the Member States of the United Nations, at the second meeting of the Preparatory Committee of the Summit (Prepcom II, 17-28 February 2003), should register their concerns about subjects for the Summit and make this a subject of reflection and debate in the same way as access to computing tools or training in their use. This is a requirement that cannot be ignored if a just, fair, world-wide information society is to come about.

PRINCIPAL CONCLUSIONS

We must resist the temptation to demonize the internet. The offences committed on the internet are not particularly original (apart from attacks by hackers); they reflect behaviours that are specific to social life, and which have already found carriers in the traditional media. Thus we need to **look at the internet as a tool for democracy**, and not only from the angle of its real or potential failings.

If the offences committed are quite real (terrorist acts, pornography, racist attacks, etc.), they are often used as an alibi for censorship of content in the name of protection of society in general and the respect of moral standards. It is advisable to alert all actors to this **alarming drift**. Freedom of expression on the internet is more than ever essential in a period of crisis and difficulties.

The internet has never been a space beyond the law: national laws apply to it, and there are many in number. The problem comes more from the large number of national legislatures, their divergence and sometimes from their inability to adjust to the internet (laws on the press and publishing, and measures to ensure the integrity of archives, in particular). If they are not adjusted to the internet, or if we do not seek greater coherence, we run two risks: first, that of **legal harassment**, and second, that of inopportune **interference** of States beyond their borders.

Freedom of expression is not a privilege reserved for rich countries. As one speaker stressed, **freedom of expression is no longer purely a Western concept**. We should recall that freedom of the press was invented in the eighteenth century in the then developing countries (Great Britain, the United States and France).

A true information society cannot be conceived of without **guaranteeing freedom of expression and in particular freedom of the press and the media**. Journalists who are currently subjected to frequent and powerful pressures, even in firmly established democracies, are mediators and guarantors of the transmission of information and knowledge, enabling citizens to play their rightful part in democratic debate. It is thus important to recall that they must be able to pursue their occupation freely.

The information society is not only about technical means of communication: it must bring into play the creating and sharing of knowledge, and deserves to evolve beyond the purely technological approach which has prevailed until now, so that thinking can be pursued on **content-related** issues. It is time to take account of the **needs and rights of users**, ranging from technical and ethical training in the information and communication technologies, to the possibility of exchanging and producing culturally diversified contents, in their own languages, and in a variety of communication modes not limited to writing, including speech, sounds and images.

Through the addresses and debates of this symposium, it has been possible to **combat a number of generally accepted ideas: there is no opposition between north and south** on what constitutes **democratic values**, and the opposition between **the West and Islam** is equally fallacious. More generally, the idea that irreducible cultural specificities might prevent us from engaging in a **dialogue around common values** deserves to be refuted vigorously. The expression "the shock of civilizations" is actually often used to legitimize the excesses of authoritarian regimes. For the experts who came together at this gathering, the defence of freedom of expression represents a common cause. The "established" democracies have an

essential role to play, but also a **responsibility: to be both the models and guardians of our fundamental freedoms.**

Mutual knowledge of cultures, respect for others, the promotion of cultural diversity and the prevention of conflicts are essential factors for economic and social development: fundamentally, they rest on the exercise of freedom of expression.

REPORT

I- Participation, inclusion: the challenges

Before speaking about freedom of expression, it is necessary to remove certain barriers caused mainly by economic, social and cultural disparities.

The **digital divide** is a reality: 88% of Internet users account for only 15% of the world population. It is thus advisable to avoid a "rich person's debate". The digital divide indeed leads to the **exclusion of entire cultures and social groups**. So how can this problem be solved? Above all, clear direction is needed, together with work on access and training, and an awareness of the risk of content being confiscated and of phenomena of "colonization". It is absolutely necessary to maintain a world vision.

Languages: linguistic diversity still exists at a very low level on the internet. The limited number of languages present on the internet, with English predominating, constitutes a significant obstacle to access to this means of expression for the majority of the world's population. Not only content, but also applications and training manuals are far from being available in the languages of many users. In many cases, to access the internet requires training in a foreign language. In the on-line discussion forum held just before this symposium, language was identified as the principal barrier to access to information and communication technologies (ICTs).

Culture: user training is of primary importance. Illiteracy, very widespread in the world, is an eliminating factor. Women in particular are kept away from the internet (because they are more affected by illiteracy and lack of schooling, and tend to be marginalized socially by reason of certain traditional habits). The kind of training needed is not only technical: thus, speakers also stressed the paramount importance of a user culture, implying appropriate behaviour which respects other people as well as the diversity of their opinions.

Economic factors: commercial considerations are becoming the only logic. Investors want immediate profitability: but this is a barrier to experimenting with innovatory initiatives in the medium term, in particular to make available collective access or training in using the internet. Costs of connection obviously constitute a powerful barrier to access for all to world networks.

Interactivity and passivity: the internet is moving away from its original model of co-operative communication based on exchange, and tending towards the logic of a mass broadcasting medium, resulting in concentration of producers and the progressive disappearance of interactivity.

Search engines are likely to select only sites with an essentially commercial purpose, with the risk that resources of original, not-for-profit content will be excluded (local information, the communication of research and scientific and cultural knowledge, the exchange of cultural works). This raises the problem that certain languages are put at an unfair disadvantage if they do not possess suitable computing tools (search engines, electronic dictionaries, translation systems for key words, or quite simply character sets which make it possible to write them with computing tools). Local contents in languages other than the dominant languages are difficult to access.

A **limited resource**: addresses and domain names. The addressing system under the current IPV4 protocol is not flexible, and is practically exhausted, even if it still remains viable for electronic mail. We need to encourage its replacement by the new protocol IPV6 which allows for the use of an almost unlimited number of addresses, but also a very great number of languages and characters (the Unicode standard). Moreover, bandwidth represents another resource which needs to be permanently increased in line with growth of applications, services and the number of connected terminals.

The **legal and technical framework**. Participation in decision forums working on norms and standards, and regulation of the internet, is expensive and requires high levels of expertise. Africa, for example, is notably under-represented in these forums.

II- Ever greater opportunities: citizenship, democracy, creativity

It is not possible here to enumerate all the new opportunities offered today by a technology which is constantly improving its performance capacity. It should simply be noted that the internet can be equated with the emergence of parabolic antennae for television reception, and make authoritarian governments understand that claims to exert total censorship are illusory. In this respect, the internet is a superlative: it crosses borders, it penetrates rural areas. It thus offers an unprecedented opportunity to exercise freedom of expression.

Moreover, the speakers stressed the importance of the internet in making it possible to set up networks, of journalists for example, which transcend countries and continents.

1. Participation in democracy

The internet will modify the exercise of democracy. It brings about a more direct link between citizens and the State. Access to administrative services is faster, access to justice can be simplified. Every individual has the opportunity of participating in an active, more transparent and more effective form of citizenship. We are moving towards an era of choice. All elected officials will thus find themselves on the same level.

New demands are emerging, for example the aspiration that **democracy** be conducted **on line**. However, this cannot happen without posing a number of problems: how can the representativity and legitimacy of discussion forums in the democratic debate be guaranteed (as regards the sites of **NGOs**, communities or associations, etc.)?; how can we be sure that instantaneity and simultaneity does not prejudice the quality of debates, the need for detachment and for acceptance of the decisions taken? Specific levels of authority will emerge: global and local. Democracy is moving from local authorities to communities, and in this respect, it is necessary to be wary of the influence of lobbies. Lastly, the nature of debate is changing: it is never closed, democratic consultation is continuous, and decision makers and elected officials must come to terms with **fuzzy logic**.

Voting via the internet: several countries in Europe have experimented with this, or are about to do so (the United Kingdom, Germany, Norway, Estonia). Voting via the internet poses the problem of confidentiality, although voting by this method could be faster and more reliable. At a time when abstention rates in elections are reaching alarming levels, the internet must be harnessed to repair the bond between citizens and democratic institutions, and to increase participation in the voting process. At the local level, the 125 municipal authorities taking part in the Global Cities Dialogue network have undertaken a number of initiatives in the area of local democracy.

2. Cultural and creative diversity

The internet's extraordinary ability to propagate information has brought about a true revolution. Technology has engendered a new form of debate, a kind of permanent "conversation" (the term used by the Supreme Court of the United States). This lowering of publication costs represents a tremendous opportunity for the creation of newspapers and an on-line publishing industry (as can be seen in Africa). Digital convergence is causing other upheavals too. If television has in the past captured the imagination of humanity, it is necessary from now on to anticipate a "post-television" attitude and to be ready for real changes in cognitive processes.

Publishing on the internet is not in competition with the traditional press. It is also instructive to observe attitudes towards television and the internet: thus, the number of hours

spent watching television is falling. Spectacular cost reductions are generating an extraordinary growth in the number of connections and in the exchange of ideas. But although there are currently (in 2002) 25 million servers in operation throughout the world, the fact remains that technologies are very unevenly distributed.

Similarly, there exist different levels of interactivity and use of images and texts. A new logic is appearing, based on images, and on presenting information structured in a different way. Convergence of the media will only accentuate this phenomenon, and we must be prepared for the emergence of an "image-ocracy" using new "metaforms". The relationship between words and pictures is changing, and indeed the relationship with the written word is being truly transformed.

However, language represents a cognitive universe, and the risk of an excessively dominant language imposing itself brings with it the risk of standardization of expressions. The preservation of linguistic diversity is also the promotion of marginalized languages, in particular those which do not possess written forms of expression.

3. Dialogue between cultures

The interactive, interpersonal nature of the internet provides an unparalleled means of bestowing visibility on certain modes of expression. Multiculturalism is moreover a viewpoint on human life: all cultures are plural, and plurality and diversity are absolutely essential. We must be wary of the risk of integrating all cultures into a single paradigm, and of the risk of imposing a single ethical and intellectual model.

In this respect, we certainly should not speak about cultural incompatibility among different civilizations. The internet must also make it possible not to divide cultures from one another, and to ensure the propagation of cultural expressions. Dialogue between cultures must be encouraged by the use of translations and an internationalization of the internet. Finally there arises the problem of illiteracy and the sharing of linguistic abilities. Technologies must allow users with writing difficulties to participate fully in the information society.

III- Dangers and restrictions

1. The temptation of censorship

The attempts of governments to censor the exchange of ideas and the free circulation of content are numerous. It is important in this respect to go beyond the simplistic opposition between countries of the south and those of the West: freedom of expression brings autocrats and democrats face to face. There are many ways of restricting freedom of expression: filtering contents, monitoring communications, spying on Internet users. Many illustrations were provided.

More serious perhaps, censorship is not specific to governments. On the one hand, access providers collude with certain States by accepting self-censorship, which can go as far as signing agreements with governments to deny access to entire lists of sites and certain types of content. Furthermore, the protection of the brand image of certain commercial products leads to access providers practising censorship. Thus, governments are not alone in resorting to censorship; the private sector may take on this task for other reasons.

2. Post-September 11 and the bad example set by democracies

Western democracies are setting a bad example through the panoply of measures intended to censor freedom of expression or to contain it closely. The post-September 11 period had alarming consequences: legislative measures authorizing the surveillance of Internet connections, spying on messages and excessive filtering of sites for pro-terrorist and anti-Western content, but also for pornographic and paedophile content. Measures taken concerning the internet were spoken of as post-September 11 "collateral damage". Authority had gained the upper hand over freedom of expression. Some States do not hesitate to exert pressure on certain countries to suppress television programmes, appropriating for themselves a right of control outside their borders, and answerable only to their own citizens.

The non-governmental organization "Reporters sans frontières" has written a report on countries which have restricted press freedoms; this report mentions 15 "modern" democratic countries. The effect is disastrous, for it is used as an argument by regimes opposed to freedom of expression.

IV- What principles? Freedom, responsibility, authority

The discussion forum set up to prepare this symposium made it possible to identify certain positions of principle. Concerning the abuse of freedom of expression, two fundamentally opposing positions emerge. The first of these defends the idea that the concept of abuse of freedom of expression is irrelevant, since regulation is effected by the debate of ideas. This is the position of the United States, for example. Other countries maintain that there is no freedom without responsibility; this is the European position, notably shared by France.

1. Total freedom?

Freedom of expression on the internet must be absolute, without exception. This fundamental principle is an ultimate objective towards which we must strive. The first amendment of the Constitution of the United States perfectly illustrated the legislator's will to impose an ethical horizon on political decision-makers. However, the internet is still far from being a space of freedom, and constant vigilance against threats to freedom of expression remains a necessity. Even in the United States, freedom is threatened. The scope of Article 19 of the Universal Declaration of Human Rights, which stands as the reference, is also limited by a number of exceptions. Each State is tempted to have its own legislation applied: the Yahoo case is an example of this. Moral stakes should not override rational ones: **expression, not conduct, is the question here, and it is fundamental to freedom and human dignity.** Expression must be protected **from all the attempts to restrict it, which alas also form part of its own history.**

In the absence of a consensus on this fundamental principle, an alternative comprising four complementary principles can be envisaged:

- First principle: freedom on public order questions must without exception be absolute. The right to criticize the government is essential.
- Second principle: the expression of ideas, whatever they are, must be protected absolutely.
- Third principle: freedom of expression cannot be limited by reason of the damage which may be caused to society
- Fourth principle: the experience of the first three principles should show that any exception to these first principles must be sanctioned. The spread of fear and prohibition should not be allowed, as it would act against freedom of expression.

2. Should freedom of expression be constrained?

Some speakers underlined the need to constrain freedom of expression, provided that such constraint would not cause simply marginal or awkward ideas to disappear.

They stressed how far **the role of public authorities seemed to them to be impossible to circumvent.** Thus, those who consider that freedom of expression and information carries with it "**duties and responsibilities**", as stated in article 10 of the European Convention on Human Rights, consider that States may legitimately restrict freedom of expression and information on the internet, since the exercise of those freedoms may be subject to certain restrictions.

Thus, these speakers maintain that it can be legitimate, and even desirable, for States to take measures to prevent the diffusion on Internet of illegal content such as child pornography or racist or xenophobic material. Beyond illegal content, **it is also legitimate for States to take measures to restrict access to certain harmful types of content** such as violence, in the interests of protecting minors, since it can be legitimate to limit freedom of expression on the

internet to protect areas of public interest such as national security, territorial integrity or public health, or for maintaining the authority and impartiality of the judiciary.

However, the European countries which are signatories to the European Convention on Human Rights do not enjoy an unlimited margin of action in this matter. Their action remains subject to the control of the European judicial authority, i.e. the European Court of Human Rights, since any restriction must respect the three conditions imposed by the Court: 1. it must be prescribed by law, 2. it must correspond to one of the legitimate reasons for restriction stated in paragraph 2 of article 10, and 3. It must be "necessary in a democratic society", i.e., according to the time-honoured formula used by the Court, it must meet a "pressing social need " and be strictly proportionate to the objective pursued.

Some speakers also mentioned the need to seek a point of balance between freedoms and conflicting interests, pointing out that the reciprocal interpenetration of legal cultures could make possible the setting up of a form of "international public order".

V- Means of regulation

1. Standards

Cyberspace is not a space outside the law. On the contrary, it is governed by a whole set of prescriptive systems, which are complementary but compete with each other.

- The legal systems of States naturally play a part here, although in practice they encounter limits of application related to the borderless character of the internet. States can also set up normative systems which transcend borders, as is the case at the European level for example.
- There is also being developed a "lex electronica", which constitutes an obligatory, non-national corpus of law. This law of cyberspace emanates from new communities which transcend national frontiers and create standards intended to govern their activities in their field. The locus of legitimacy is moving increasingly from States towards these communities.
- The third type of normative system is technical. The architecture of the internet, its software and technical standards define a framework of norms which determine conditions of access to and use of the internet.

The diversity of these normative systems, and the fact that a significant share of cyberspace standard-setting is performed by non-State authorities, make co-ordination necessary to ensure overall consistency. Hence the importance of normative intermediaries, which are as many means of enabling Internet actors to receive and apply effectively those standards which they perceive as being mandatory and relevant.

These **intermediaries** are the embodiment of the concept of co-regulation, lying as they do at the heart of the dialogue between normative systems and Internet actors. Modes of responsibility are a major intermediary between State-run normative systems and Internet actors. The latter seek to limit the risks related to their activities, and which could engage their responsibility. To do this, they adopt codes of conduct relating to the transmission (codes) and reception (guides for users) of messages, thus relaying the requirements posited by the standards. In this way Internet actors set up their own self-regulatory mechanisms. Through co-regulation and self-regulation, the legal provisions deemed necessary are brought up to date and adjusted within the framework of these continuous processes.

There is no need to proclaim new rights or to lay down new rules. Similarly, rather than seeking to harmonize legal cultures and systems which differ from State to State as far as concepts of rights and freedoms, their scope and hierarchical organization are concerned, it is preferable to develop ways of making those rights and freedoms effective in cyberspace. It is thus necessary to reinforce the normative intermediaries which make it possible to develop dialogue and to ensure the effective application of the legal framework.

It is essential to enable ideas to circulate, proposals to be expressed and discussed, and to ensure that all the groups concerned can take part in these discussions, remembering that any decisions are provisional and liable to be questioned. An upstream campaign of education and awareness is also fundamental to bring together systems, intermediaries and the diversity of actors.

2. Regulation

The capacity of States to regulate the internet is limited in its effectiveness and relevance by the very characteristics of the internet. The first limitation arises from the fact that the internet

constitutes a space without borders, whereas national laws cannot apply beyond the frontiers of the State. The second essential limitation arises from the fact that Internet operations are above all governed by technical standards defined by companies and rules of use established by communities to manage their activities. The State is thus not the only source of normative activity.

Freedom of expression is a right recognized by article 19 of the Universal Declaration of Human Rights, which signatory States are obliged to respect. However, for some it is not an absolute right, and States may have legitimate reasons to limit it, since their margin of action is constrained, and subject to strict conditions. At the European level, the Council of Europe is experimenting with a form of regional inter-State regulation, founded on article 10 of the European Convention of Human Rights which states that freedom of expression also carries with it duties and responsibilities.

A further difficulty lies in the definition and the distribution of responsibilities and in the means of implementing them so that Internet actors assume those responsibilities which are rightly theirs. Should responsibility for content fall exclusively on authors and/or on technical intermediaries such as website hosts and Internet access providers?

3. Self-regulation

This consists in entrusting to the private sector and to all other actors involved the duty to enact rules, codes of conduct and good practices, which can be made known by the adoption of labels, codes of practice, etc.

This approach should not lead to the delegation or sub-contracting to the private sector of the sanctioning of violations or the enjoyment of a right.

Moreover, as indicated above, restrictions on freedom and censorship are not government monopolies, but can also be practised by private actors. Hence the need to encourage partnerships between public authorities, private companies and users which clearly define the roles and responsibilities of each.

4. Co-regulation

This concept is based on consultation among all Internet actors (public authorities, the private sector, users) and aims at allowing appropriate solutions to emerge, from the starting point of an open and balanced debate on the important issues surrounding the internet.

France, for example, has adopted this approach by creating, in May 2001, the Internet Rights Forum, an independent organization which provides a neutral platform for exchange and dialogue among internet actors. This original experiment, which has established a new process for the development of rules and conduct, is now being extended to the European level (e.g. the Belgian Internet Rights Observatory).

Australia has also chosen co-regulation, taking as its inspiration the European Union's "eSafe" programme which develops initiatives in the areas of hotlines (the European INHOPE network), classification of contents, site filtering, awareness-building and training of users, and codes of conduct. In 2000, it adopted a plan for the regulation of content intended to establish a balance between the right to freedom of expression of adults and the protection of children against illegal and harmful content. This initiative relies on the interaction of three types of actors: the ABA (Australian Broadcasting Authority), the private sector and users, and comprises three components: a hotline managed by the ABA which users can use to lodge complaints

against illegal and harmful content, codes of conduct developed by companies (Internet access and content providers), and on-line and off-line awareness and training programmes for users. These mechanisms facilitate adaptation to technical and social changes.

VI- What forms of international co-operation?

Is an international convention necessary? One of the benefits of the process of preparing for the World Summit will certainly be that answers to this question will begin to emerge. But, once again, this is a long-term process which will require the participation of as many actors as possible.

Widely differing national legal systems are in competition with each other, and a number of examples reveal that the temptation is considerable for States to try to exert control and even to try to apply their own law beyond their national borders. The question that needs to be asked is how reciprocal contamination of legal cultures could possibly lead to the achievement of some kind of "international public order".

The internet and the very free use which has been made of it until now thus provide reliable indications as to what should be preserved and controlled at the international level, to avoid the adverse effects both of a form of freedom of expression without responsibility and of abusive modes of regulation. Some form of world regulation of freedom of expression could be brought about by adopting common fundamental principles such as the dignity of the individual, the prohibition of the exploitation of minors and condemnation of all forms of discrimination, in particular those founded on race or religion. To this end, we have international and regional standards of reference, which could be used as a basis for this set of core common principles, such as the Charter of the United Nations, the European Convention for Protection of Human Rights and Fundamental Freedoms, and the African Charter on Human and Peoples' Rights.

However, to arrive at a world consensus on such a common fund of basic principles, negotiations between States could prove insufficient. Consequently, it appears necessary to imagine new ways of developing standards, bringing together all parties concerned, (governments, the private sector and users) within the framework of an open international dialogue.

Dialogue between countries is necessary on many subjects: is it not deeply paradoxical that developing countries suffer the highest costs of connection to the network? Regional dialogue is another direction worth exploring, for example with NEPAD (New Partnership for African Development) and the RASCOM project for an African communications satellite.

ANNEX: AGENDA

Friday November 15, 2002

9h00 Welcome and registration of the participants

9h30 Opening session

- Mr Marcio Barbosa, Deputy Director-General of UNESCO
- Mr Jean Favier, President of the French Commission for UNESCO
- Mr Roger Dehaybe, General Administrator of the Agence intergouvernementale de la francophonie
- Mrs Isabelle Falque-Pierrotin, President of the internet Rights Forum

**11h00 FIRST ROUND-TABLE: DOES CYBERSPACE OFFER NEW OPPORTUNITIES?
CYBERSPACE: A NEW SPACE FOR THE EXERCISE OF FREEDOM OF EXPRESSION.**

Moderator: Mr Eric Baptiste, President of the Information and Communication Committee, French National Commission for UNESCO

1. Promotion and exercise of the right to freedom of expression at global scale.

- Mr Burton Caine, Professor of law at the Temple University (USA)
- Mr Owais Aslam Ali, Secretary-General of the Pakistan Press Foundation (Pakistan)

2. Development of participative democracy and world civil society.

- Mr André Santini, President of the Global Cities Dialogue and Mayor of Issy-les-Moulineaux (France)

3. Expression of pluralism, cultural and linguistic diversity, and creativity.

- Mr Alejandro Piscitelli, Professor at Buenos Aires University (Argentina)
- **Mr Basyouni Ibrahim Hamada, Professor in communication at the United Arab Emirates University (United Arab Emirates)**

13H00 Lunch

15h00 SECOND ROUND-TABLE: ARE THERE OBSTACLES TO OVERCOME?

18H30 THE GARANTY OF FREEDOM OF EXPRESSION RESPECT AND THE PROMOTION OF ITS FULL EXERCISE

Moderator: Mr Dominique Gerbaud, member of the Reporters Without Borders board, and La Croix Chief Editor

1. What are the obstacles -legal, technological, and otherwise- to freedom of expression in cyberspace?

- Mr Jacques Bonjawo, Manager of the internet Division MSN.com, Microsoft
- Mr Peter Noorlander, Legal Officer, Article 19
- Mr Jean-Paul Marthoz, European Press Director, Human Rights Watch

2. What are the elements - economic, technical, linguistic, and otherwise-, conditioning the full exercise of this right in cyberspace?

- Mrs Karima Bounemra Ben Soltane, Director, Development Information Services Division, Economic Commission for Africa, Contact person for the African information Society Initiative (AIS).
- Mrs Christine Maxwell, Trustee Emeritus at the internet Society (ISOC)
- Mr Chin Saik Yoon, Publisher and Managing Director at Southbound (Malaysia)

19h00 Reception

SATURDAY NOVEMBER 16, 2002

10h00 THIRD ROUND-TABLE : IS THE DEFINITION OF STANDARDS NECESSARY?

THE GARANTY OF THE RESPECT AND PROTECTION OF ALL THE VALUES AND RIGHTS OF SOCIETY IN CYBERSPACE.

Moderator: Mr Lionel Thoumyre, Technical Advisor, Internet Rights Forum.

1. Should new ethical, legal and technical standards be defined, in cyberspace, to guarantee the preservation of freedom of expression and the protection of:

- **human dignity, children rights, privacy, human rights in general;**
- **network security, collective rights and democratic values?**

If so, what should these standards be, who should define them, and at what level?

- Mr Pierre Trudel, Law Professor, Public Law Research Center, University of Montreal (Canada)

- Mr A.K Chakravarti (India), Head of the Information Technology, Forecasting and Assessment Division, Department of Information Technology, Ministry of Communications and Information Technology

- Mr Jean-Christophe Le Toquin, Permanent Delegate of the Association des fournisseurs d'accès et services Internet (AFA)

2. What kind of integrated system of cooperation could be set between the different parties concerned and between states, in a space with no boundaries?

- Mr Christophe Poirel, Head of the Media Division, Directorate General of Human Rights-DG II, Council of Europe

- Mr Laurent Grosse, Law Advisor, Interpol

- Mrs Andree Wright, Director, Industry Performance and Review, Australian Broadcasting Authority (Australia)

13H00 Lunch

15h00 Final session

General report

Mr Daniel Malbert, Technical Advisor, Department of international affairs, Ministry of Culture and Communication (France)

Conclusions

Mr Philippe Quéau, Director of the Information Society Division, UNESCO
MR JEAN-PIERRE-BOYER, SECRETARY GENERAL OF THE FRENCH
NATIONAL COMMISSION FOR UNESCO

17h00 End of the meeting