



## United States Mission to the OSCE

# **OSCE Meeting on the Relationship between Racist, Xenophobic and Anti- Semitic Propaganda on the Internet and Hate Crimes**

As prepared for delivery by Daniel Bryant, Assistant Attorney General, Office  
of Legal Policy, U.S. Department of Justice  
Keynote Address  
Paris, June 16, 2004

Thank you, Mr. Chairman.

Mr. Chairman, Ambassadors and Delegates, Ladies and Gentlemen, it is an honor and a privilege to address this important meeting on behalf of the Government of the United States.

The Organization for Security and Cooperation in Europe has been at the forefront of efforts to promote liberty, democracy, and tolerance across the European continent and around the globe. Through its Office for Democratic Institutions and Human Rights (ODIHR), field missions, and other institutions, the OSCE has worked to end ethnic strife and to ensure respect for fundamental freedoms as well as equal treatment under the rule of law. It is therefore fitting that the OSCE has convened this meeting where we will focus on the vital task of combating hate or bias-motivated crimes while at the same time upholding the freedoms of speech and expression.

We convene in Paris, a city that sixty years ago today remained occupied by one of the most evil regimes that mankind has ever known, a regime animated at its core by a murderous ideology of intolerance, anti-Semitism, racism, and xenophobia. Today, however, governments from across Europe gather in this city with their allies from across the Atlantic standing united in their determination to combat racism, xenophobia, and anti-Semitism. This contrast serves as a reminder that the progress we have made over the last sixty years in advancing the causes of tolerance, liberty, and human dignity is nothing short of

remarkable. But so long as intolerance and oppression exist anywhere in the world, there is more that needs to be done.

In the United States, for example, we have made considerable strides in the last sixty years, both in ending the scourge of legal discrimination as well as in reducing the prevalence of racism, xenophobia, and anti-Semitism in our society. But sadly, we are reminded on a regular basis in our country that too many hearts remain burdened with intolerance and too many individuals are victimized as a consequence.

In 2002, for example, United States law enforcement agencies reported 7,462 incidents of crimes motivated by a bias against race, religion, sexual orientation, ethnicity, national origin, or disability. The two most common motives in these incidents were those of bias against African-Americans and Jewish-Americans.

In the United States, the law has mandated the collection of this information and other data concerning bias-motivated crimes since 1990, and the federal government publishes an annual report summarizing this information. We believe that the reporting and compilation of this data is critical to government efforts to develop effective measures to combat hate crime and serves to raise awareness of the problem as well. In order to implement a successful strategy for reducing bias-motivated crime, we must know how often such crimes are occurring, where they are occurring, and why they are occurring. We therefore urge all participating States to require the collection and reporting of this information on an annual basis as an element of their strategy for combating hate crimes.

We also believe that one of the best ways to deter and thus prevent bias-motivated crimes is to prosecute and punish those engaging in such criminal behavior to the full extent of the law. It is not enough simply to have laws on the books prohibiting hate crimes or providing for sentencing enhancements for crimes motivated by bias; those laws must be vigorously enforced, and we urge all participating States to take decisive action in this area as well.

In the United States, the responsibility for prosecuting the perpetrators of bias-motivated crimes is divided between state and local governments and the federal government, and these entities work together in a cooperative fashion to ensure that such crimes are prosecuted effectively. In many cases, state and local authorities take the lead in the investigation and prosecution. In other cases, however, such as those where perpetrators attempt to interfere with a victim's ability to attend a public school, maintain employment, or take advantage of

public accommodations or public services, the federal government possesses the primary responsibility. The United States Department of Justice vigorously prosecutes those committing bias-motivated crimes in these areas; in the last four years alone, we have brought charges against 154 defendants.

To give just one example, the Department of Justice last year prosecuted two defendants affiliated with a skinhead group for assaulting several young African-American and Hispanic students as they were walking home from a high school football game. These defendants verbally threatened their victims and used racial epithets while chasing them through the streets of a Chicago, Illinois suburb. After surrounding a terrified African-American girl, one defendant placed a knife to her throat while threatening to kill her. In this case, thanks to the Department's efforts, the defendants pleaded guilty and were sentenced to prison terms.

A main focus of this meeting is the possible link between such bias-motivated crimes and racist, xenophobic, and anti-Semitic speech on the Internet. As the United States Supreme Court, among others, has noted, "[C]ontent on the Internet is as diverse as human thought." And we believe that this will continue to be the case no matter what actions may be taken by government. So long as intolerance enjoys a home in any hearts and minds, it will manage to find a home somewhere on the Internet. As we discuss the presence of racist, xenophobic, and anti-Semitic speech on the Internet, however, it is important that we not lose sight of the bigger picture.

Examined as a whole, the Internet is not the enemy of liberty, tolerance and individual dignity. On the contrary, the Internet holds enormous potential to empower individuals with knowledge, enhance communication around the globe, and erase the ignorance and misunderstanding that fosters intolerance. The astounding amount and variety of information that the Internet makes available to the citizens of our respective nations with the touch of a few keystrokes would amaze those living in past generations. To give just one example, an individual can now browse from the comfort of his or her own living room the content of newspapers from around the world on a daily basis. But the Internet allows for far more than the passive receipt of information in isolation. It is also facilitating unprecedented opportunities for people around the globe to gather, exchange ideas, learn about each other, and, yes, even argue and debate in cyberspace.

The access to information and communication provided by the Internet is reinvigorating democracy in the United States. Voters are surfing the web to

learn more about candidates and issues, citizens have become desktop publishers and are expressing their views through weblogs, and numerous Americans are taking advantage of exciting new avenues for participating in the public discourse through a diverse range of websites and usergroups. Moreover, as this gathering fully appreciates, this phenomenon is by no means limited to the United States.

Unfortunately, however, some governments around the globe do not see the Internet as a resource to be embraced but rather as a threat to be feared. They seek to deny their citizens access to the Internet or to limit such access by strictly filtering those websites to which their citizens may be exposed. We believe that these courses of action are seriously mistaken and antithetical both to the values for which the OSCE stands, including the freedom of opinion and expression, and to the commitments made by participating States.

The Government of the United States has taken a number of concrete steps to promote access to the Internet in both homes and schools across our country, and we strongly encourage participating States to do the same. We believe that access to the wide array of information and diverse set of opinions available on the Internet will serve to foster dialogue and understanding, reduce ignorance and prejudice, and ultimately bring the people of the world closer together.

Like others at this meeting, however, we are appalled by some of the speech that is transmitted on the Internet. We strongly condemn and deplore racist, xenophobic, and anti-Semitic speech on the Internet just as we condemn and deplore such speech that is communicated through more traditional means. But, consistent with Article 19 of the Universal Declaration of Human Rights, the United States resolutely opposes attempts to suppress or regulate such expression.

We recognize, of course, that the American approach to hate speech differs significantly from the approach to such expression embraced by many of the countries represented at this meeting. So I would like to take a moment to set forth the basis of our position. The First Amendment to the Constitution of the United States provides, in part, that Congress shall make no law “abridging the freedom of speech.” As the United States Supreme Court has stated, this provision embodies our country’s “profound national commitment to the free exchange of ideas.” Pursuant to the First Amendment, the Government of the United States as a general matter may not restrict speech “because of its message, its ideas, its subject matter, or its content.” The government thus may not restrict or suppress speech merely because it disapproves of the viewpoint

expressed by a speaker. As a result, although the Government of the United States deploras racist, xenophobic, and anti-Semitic speech, we are constitutionally restrained from restricting such expression merely because we disagree with it. And let me be clear: we embrace this principle as an essential component of our constitutional tradition.

Robust debate is the cornerstone of our democracy, and we believe that all individuals must be permitted to add their voices to that debate. While we may not like what every participant in the debate will choose to say, democracy is premised, at least in part, on the notion that the best viewpoints will win out in the marketplace of ideas. Moreover, once government is given the power to restrict speech with which it disapproves, where does one draw the line? While all of us attending this meeting no doubt condemn racism, xenophobia, and anti-Semitism, granting government the authority to suppress speech with which it disagrees places the free speech rights of all individuals holding unpopular viewpoints at risk. For example, we must always be concerned by the prospect that laws prohibiting hate speech may be abused by those governments seeking to suppress political dissent and believe that studies should be undertaken to determine whether these laws are, in fact, being misused in any nation as a means of silencing government critics.

There is social value, we believe, in allowing those with racist, xenophobic, and anti-Semitic views to express their opinions and ideas freely. While it is certainly possible to restrict bias-motivated speech and punish those engaging in such expression, such measures only address particular manifestations of prejudice; they obviously do not eliminate the prejudice itself. And so long as individuals hold biased or prejudiced views, it is in society's interest to know that fact so that appropriate measures can be taken to address that problem.

Our ultimate goal, after all, is not to eliminate racist, xenophobic, and anti-Semitic speech. Rather, it is to end such biases, and the best way to eliminate prejudice is not through the restriction of expression. It is instead to confront those expressing bias by addressing their fallacious arguments head on.

Our experience in the United States does not indicate that respecting the freedoms of speech and expression, on the one hand, and combating prejudice, on the other hand, are mutually conflicting goals; indeed, we believe they go hand in hand. The United States today is a much more tolerant society than it was fifty years ago; in the intervening time period, the amount of racism, xenophobia, and anti-Semitism present in society at large has been reduced dramatically and strong civil rights laws have been enacted to forbid invidious

discrimination. Significantly, this progress has occurred during a period when the freedoms of speech and expression were steadily broadened. Indeed, some of the most significant U.S. Supreme Court decisions of this era expanding the freedoms of speech and expression worked to the advantage of those in the civil rights movement struggling to achieve racial equality.

For all of these reasons, we believe that government efforts to regulate bias-motivated speech on the Internet are fundamentally mistaken, and this is why the United States is respectfully unable to sign the Additional Protocol to the Convention on Cybercrime Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems.

At the same time, however, the United States has not stood and will not stand idly by when individuals cross the line on the Internet from protected speech to criminal conduct. The same Internet capabilities that are facilitating increased political dialogue and interpersonal communications are also being used by criminals and terrorists as tools for conspiring to commit and planning violent acts, as well as fundraising, and we are committed to vigorously enforcing the laws forbidding this behavior.

In addition, while the First Amendment protects the right of individuals to express racist, xenophobic, and anti-Semitic views and ideas, it does not protect the right to make criminal threats, whether those threats are communicated over the Internet, the telephone, or some other medium. Thus, the Government of the United States has prosecuted and will continue to prosecute those individuals using the Internet to make direct and credible threats to engage in criminal behavior. In one case, for example, an expelled college student, in an e-mail message sent to Asian-American students at a university in California, threatened to kill all Asian-Americans on campus if they did not leave the university. The Department of Justice filed charges against the expelled student for threatening to use force to interfere with attendance at a public university. The student was convicted and sentenced to prison.

Likewise, no matter what an individual's viewpoint may be, the United States Supreme Court has ruled that the First Amendment does not protect advocacy that is directed to inciting imminent lawless action and likely to incite such action. While this is a tough test to satisfy and actual examples of incitement meeting this standard are few and far between, the United States stands ready to prosecute those engaging in illegal incitement, if and when such cases arise.



For the most part, however, the problems that we will address at this meeting cannot be and should not be addressed through government regulation. Rather, we must respond to those using the Internet to promote racism, xenophobia, and anti-Semitism through other means. In particular, the United States looks forward to working with other governments and NGOs at this meeting on identifying ways that we can harness the Internet's enormous potential as an educational tool to promote tolerance and to combat hate crimes. We also believe it is important that the participants at this meeting focus on developing best practices for both educating young people in order to prepare them for bias-motivated speech they may encounter while surfing the web as well as empowering and encouraging parents to exercise greater supervision and control over their children's use of the Internet.

Over the next two days, members of our delegation will set forth specific suggestions for ways to combat bias-motivated crimes while at the same time respecting the freedoms of speech and expression. But we also need to learn from your wisdom and are here to listen.

Finally, although we will undoubtedly have our differences on some of the issues to be discussed at this meeting, we all share the same noble goal: the elimination of racism, xenophobia, and anti-Semitism. And it is my sincere hope that by engaging in a substantive, open, and respectful dialogue over the next two days, we can move one step closer towards achieving that objective.

Thank you for the honor of inviting me to deliver these remarks to you this morning, and I look forward to meeting and speaking with as many of you as possible during the remainder of the meeting.