



**Asia-Europe Meeting**

# Freedom of Expression

**Proceedings of the 8th Informal  
Asia-Europe Meeting (ASEM) Seminar on Human Rights**

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# Freedom of Expression



**Raoul Wallenberg Institute**  
*of Human Rights and Humanitarian Law*



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Views expressed here do not necessarily reflect those of the co-organisers, publisher or editors of this volume.

# Acknowledgements

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We owe many thanks to His Excellency Sou Phirin, the Siem Reap Governor, the Vice-Governor and his colleagues for their warm welcome from Siem Reap International Airport and their help in facilitating the access of our invitees to their country.

Finally, we thank the indefatigable team at the Asia-Europe Foundation (ASEF) for their efforts in putting together this Seminar – Mr Peter Ryan, Ms Sol Iglesias, Ms Natalia Figge and Ms Dewi Tio. For assistance in editing this publication we warmly acknowledge the work of Ms Sol Iglesias.

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State Counsellor

Representative of the Ministry of Foreign Affairs, France

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Director

Raoul Wallenberg Institute, Sweden

**Bertrand Fort**

Deputy Executive Director

Asia-Europe Foundation

# FREEDOM OF EXPRESSION PROCEEDINGS OF THE 8<sup>th</sup> INFORMAL ASIA-EUROPE MEETING (ASEM) SEMINAR ON HUMAN RIGHTS

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## **Introduction: The Informal ASEM Seminar On Human Rights Series**

**Peter Ryan**

Director for Intellectual Exchange, Asia-Europe Foundation

The Asia-Europe Meeting (ASEM)<sup>1</sup> is a forum that promotes various levels of cooperation among Asian and European countries. It represents a process based on dialogue, with the objective of strengthening interaction and mutual understanding between the two regions and promoting cooperation that aims at sustainable economic and social development.

ASEM is an informal process of dialogue and cooperation among partners on all issues of common interest to Asia and Europe. Summit meetings are held every other year, alternately in Asia and Europe. This is the highest level of decision-making in the process, featuring the Heads of States or Heads of Governments, the President of the European Commission, accompanying ministers and other stakeholders. So far, five Summit meetings have been held in Bangkok (1996), London (1998), Seoul (2000), Copenhagen (2002), Hanoi (2004) and Helsinki (2006). The next Summit meeting will be in China.

At the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France had suggested that informal seminars on human rights be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

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<sup>1</sup>ASEM partners include Austria, Belgium, Brunei, Bulgaria, Cambodia, China, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Korea, Laos, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, Netherlands, Pakistan, Philippines, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Thailand, United Kingdom, Vietnam, the ASEAN Secretariat and the European Commission.

Previous seminar topics include:

- Access to justice; regional and national particularities in the administration of justice; monitoring the administration of justice.  
*Lund, Sweden (December 1997)*
- Differences in Asian and European values; rights to education; rights of minorities.  
*Beijing, China (June 1999)*
- Freedom of expression and right to information; humanitarian intervention and the sovereignty of states; is there a right to a healthy environment?  
*Paris, France (June 2000)*
- Freedom of conscience and religion; democratisation, conflict resolution and human rights; rights and obligations in the promotion of social welfare.  
*Bali, Indonesia (July 2001)*
- Economic relations; rights of multinational companies and foreign direct investments.  
*Lund, Sweden (May 2003)*
- International migrations; protection of migrants, migration control and management.  
*Suzhou, China (September 2004)*
- Human rights and ethnic, linguistic and religious minorities.  
*Budapest, Hungary (February 2006)*

The formula employed is as follows:

- The participation of two representatives from universities and non-governmental organisations (NGOs) invited by the organisers and one official representative for each of the sixteen Asian ASEM countries; and, in order to have balanced representation between Asia and Europe, one representative from civil society and one official from each of the twenty-seven European ASEM countries, as well as the European Commission and ASEAN Secretariat;
- An agenda structured around the main topics related to the subject of the seminar, with discussions held in working groups;
- Closed-door debates to allow free and direct exchanges of view; and,

- A set of recommendations, elaborated collectively to be sent to the relevant institutions in ASEM countries as an informal contribution to the official Asia-Europe dialogue.

The experience of the first seven seminars has proven the usefulness of the chosen formula: a climate of confidence and mutual understanding, in accordance with the ASEM spirit, has grown stronger during this nine-year process; the topics selected by the Steering Committee, which focus on issues of common interest to the two regions, have made high quality discussions possible; the high level of participation of the ASEM partners indicates the strong interest of the partners in these meetings.

## Organisation

The Seminar series is co-organised by the French Ministry of Foreign Affairs and the Raoul Wallenberg Institute (delegated by the Swedish Ministry of Foreign Affairs) and the Asia-Europe Foundation (ASEF)<sup>2</sup>, which has served as the Secretariat of the Seminar since 2000.

The Seminar is supervised by a Steering Committee, which comprises the seminar's three co-organisers, representatives of the Foreign Affairs Ministries of China and Indonesia, as well as representatives of the European Commission.

The two coordinators – Mr Frédéric Tiberghien, Representative of the Ministry of Foreign Affairs of France, and Prof. Gudmundur Alfredsson, Adviser to the Director of Raoul Wallenberg Institute – are responsible for the orientation of the Seminar Series.

After each conference, the outcomes of the discussions are gathered in a publication that may be used by governments and civil society as a reference on the state of play of the debate on Human Rights in ASEM countries.

## Freedom Of Expression: An Overview Of This Volume

The 8th Informal ASEM Seminar on Human Rights focuses on the freedom of expression. As defined in the Universal Declaration of Human Rights:

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<sup>2</sup>The Asia-Europe Foundation (ASEF) seeks to promote better mutual understanding and closer co-operation between the people of Asia and Europe through greater intellectual, cultural, and people-to-people exchanges. These exchanges include conferences, lecture tours, workshops, seminars and the use of web-based platforms. The major achievement of ASEF is the establishment of permanent bi-regional networks focused on areas and issues that help to strengthen Asia-Europe relations. <http://asef.org>

"Everyone has the right to freedom of expression; to hold opinions without interference and to seek, receive as well as communicate information and ideas through any media and regardless of frontiers."

Broadly speaking, countries integrate the protection and promotion of freedom of expression in their constitutional, legal and procedural systems as an important factor for democracy to function. The interpretation may vary from one context to another. There are also differences in the political processes and public discourses that have led to the continuing definition/redefinition of its bounds. Moreover, differences exist between the word of the law and what is practiced in reality. Contradictions and efforts of states to control the exercise of this freedom become visible when it comes to free speech and freedom of information, thereby affecting media freedom. Indeed, the rapid development of communications technology has exponentially enlarged access to and creation of all sorts of information, resulting in a struggle to regulate content by the states and corporations. Artistic expression is another area where states and societies continue to negotiate boundaries.

On 26-28 September 2008, over 100 participants – representatives of ASEM governments, NGOs, academic institutions and think tanks – gathered in Siem Reap, Cambodia, to share their knowledge and views on freedom of expression and related matters. This publication is one outcome from the two-and-a-half day meeting. It consists of speeches pertaining to freedom of expression by key people in this field as well as a seminar report prepared by the main rapporteurs to the seminar, Professors Kevin Boyle and Cherian George.

The volume begins with opening speeches by the organisers: Executive Director of ASEM Ambassador Wonil Cho, President of the Cambodia Human Rights Committee and the host of this meeting HE Om Yentien, and speaking on behalf of the co-organisers, the coordinator of the ASEM Informal Human Rights Series, Mr Frederic Tiberghien.

The Seminar Report constitutes the fundamental part of this publication as it comprises both preliminary annotation to the Seminar, such as definitions of terms and concepts, the international legal and social framework of freedom of expression, and at the same time captures the essence of discussions and debates that took place in all four working groups: (1) Political Rights, (2) Cultural, Religious and Minority Rights, (3) Roles and Relations of State-Civil Society, International Organisations, and (4) Freedom of Expression and ICTs.

In their interventions, the keynote speakers – Cambodian Prime Minister HE Samdech Hun Sen, Former Under-Secretary-General for Communications and Public Information Dr Shashi Tharoor, and Secretary-General of Reporters without Borders Mr Robert Ménard – tried to avoid stereotypes and stonewalling. They presented in an open and

daring manner situations and approaches to the freedom of the press and speech in both Asia and Europe.

The volume ends with closing remarks of two notable speakers, Mr. Frédéric Tiberghien and Mr Jan Axel Nordlander, the Ambassador-at-large for Human Rights for Sweden.

# WELCOME SPEECHES

- **Om Yentieng**  
*President,  
Cambodian Human Rights Committee*
- **Wonil Cho**  
*Executive Director,  
Asia-Europe Foundation*

**Om Yentieng**  
President, Cambodian Human Rights Committee

Today, I have the great pleasure of welcoming you to this meeting here; a meeting that the people of Cambodia have been looking forward to for a long time. On the behalf of the Royal Government of Cambodia and the Cambodian Human Rights Committee, I would like to express my warm welcome to the representatives of the 43 countries of the Asia-Europe Meeting (ASEM), delegates of observers, the European Commission, the Secretariat of the Association of Southeast Asian Nations (ASEAN), and all distinguished guests; all of whom have contributed their physical strength, materials, resources and wisdom to relentlessly promote human rights.

I am honoured to recall and thank Sweden and France who initiated the proposal at the first meeting of ASEM Foreign Ministers in Singapore in February 1997, to hold such a seminar. I would like to thank Sweden, France, China, Indonesia, and Hungary, for hosting the first seven Informal ASEM Seminars on Human Rights since then. Today, the Royal Government of Cambodia, the Cambodian Human Rights Committee, and especially the Siem Reap province (our former capital of Angkor of the Kingdom of Cambodia), are proud to host this 8th Informal ASEM Seminar on Human Rights.

I sincerely thank Ambassador Wonil Cho, Mr Bertrand Fort, Mr Peter Ryan and the Asia-Europe Foundation (ASEF) for the valuable opportunity to host this seminar. I would also like to thank Ms Sol Iglesias of ASEF, who came to Cambodia in March 2007 so that our seminar could proceed effectively.

I fondly remember the three-day Permanent Meeting in Singapore on 27 September 2006, which had been made possible with the participation of the Raoul Wallenberg Institute, the European Commission, ASEF, and the Ministries of Foreign Affairs of France, China, Indonesia, and Cambodia.

I am also taking this opportunity to express my gratitude to the following: the joint working group of ASEF and the Cambodian Human Rights Committee; the Cambodian working group and Deputy Director-General Mr Katta Orn; the Deputy Director of the First Committee; and all of my beloved colleagues at the Cambodian Human Rights Committee, who have over the past year made great effort to fulfil their duties and

organise this seminar with much care.

My special thanks also go to the Ministry of Foreign Affairs and International Cooperation of Cambodia, the Office of the Council of Ministers, Ministry of Finance and Economics, Ministry of Interior, the Office of Custom and Excise, Immigration Police, Siem Reap International Airport Authority, and APSARA Authority, who have all made significant contributions in cooperating, organising and facilitating the seminar's working groups.

I am honoured to thank the Siem Reap Governor His Excellency Sou Phirin, as well as the Vice-Governor and his staff for their strong support and their warm welcome to all the participants.

Finally, I wish you all good health and great success – both at this Seminar and within the field of human rights.

Thank you.

**Wonil Cho**  
Executive Director, Asia-Europe Foundation

The Asia-Europe Foundation is the only existing institution created by the partners of the ASEM process of dialogue and cooperation between Asia and Europe.

ASEF is celebrating its 10th anniversary this year. Launched on 15 February 1997 in Singapore, we have worked to promote better mutual understanding between the peoples of Asia and Europe through greater intellectual, cultural, and people-to-people exchanges. These exchanges have taken place in conferences, lecture tours, workshops, seminars and on web-based platforms. Our mission draws on the agreement of leaders to forge a comprehensive partnership and to strengthen links between the two regions for mutual benefit.

It is evident that in a world full of misunderstanding and violence, many bridges of mutual understanding and respect need to be built. We hope that ASEF can continue to contribute to closer understanding and practical ties between the two regions.

I would like to take this opportunity to acknowledge the contributions of the following people: former United Nations Undersecretary-General for Public Information and Communications, Dr Shashi Tharoor; Reporters without Borders President Mr Robert Ménard; our rapporteurs, moderators, and panellists; ASEF Governors, Ambassadors, and diplomats; and participants from Asian and European civil society.

I would like to thank the government of Japan – represented here by the Ambassador for Human Rights HE Fumiko Saiga – for its support of this seminar. Also, my sincere appreciation to our partners – the Raoul Wallenberg Institute, represented by Mr. Rolf Ring; and the French Ministry for Foreign Affairs, represented here by Mr Frederic Tiberghien – for their strong support and cooperation.

Prime Minister, I thank you once again for hosting this meeting in Cambodia's historical city of Siem Riep.

ASEF attaches enormous significance to our role as the Secretariat of this Informal ASEM Seminar on Human Rights. We hope that our partners and participants will enjoy a fruitful dialogue.

## Opening Speech

Frédéric Tiberghien

Coordinator & Representative of the Ministry of Foreign Affairs  
Republic of France

Every 18 months or so, ASEM organises an informal gathering, alternately in Europe and Asia, to discuss human rights. This initiative dates back to the first ASEM Foreign Ministers' Meeting in Singapore in 1997, when Sweden and France proposed this formula. In 2000, the Asia-Europe Foundation (ASEF) was appointed as the Secretariat of this seminar. It was originally inspired by the idea that the protection of human rights is a determining factor for the development of democratic societies. The interpretation and implementation of these rights are, however, carried out differently in different countries, hence the usefulness of a forum like ours, which enables us to confront, through an informal framework, both the difficulties and achievements of implementing human rights.

As the largest event of its kind, this seminar brings together representatives of governments and civil society, including academics, heads of non-governmental organisations, trade union representatives and top business leaders. In order to best deal with the specific themes of each seminar, participants are selected based on their relevant expertise. As we are discussing freedom of speech in this edition, we have the pleasure of welcoming a number of journalists and media experts, as well as key representatives from the media industry.

The purpose of our seminar is neither to negotiate a final text nor to reach any pre-determined goals. Although we will attempt to draw some operative conclusions from our exchanges for the information of ASEM member governments, the main objective of this seminar is to engage Europeans and Asians from various sectors of society, to debate relevant issues and exchange viewpoints and practices with regard to the freedom of speech.

This seminar aims to:

- Understand the respective contexts of our different regions or countries;

- Review the issues and solutions that have already been identified or are currently in development; and
- Anticipate what is at stake for the future.

We will naturally hold our discussions within the framework of the human rights corpus promoted by international organisations, primarily the United Nations.

Let me now open the discussion with seven key remarks or questions about freedom of speech.

## **1 Freedom of speech is now deemed inseparable from democracy.**

Democracy rests on the freedom of speech and the freedom of thought, and consequently, the freedom to seek information. The Universal Declaration of Human Rights links all these aspects in an indissoluble manner. Historically, it is unusual to find governments and leaders who readily accept freedom of speech. This freedom, like many others, has had to be conquered. Because freedom of speech is as useful to those in power as it is to those in opposition, the struggle to preserve and to reinforce this precious commodity is relentless.

Therefore, let us be realistic from the start: it is normal that freedom of speech is not always considered favourably by the authorities, particularly in dictatorial regimes. Leaders in these regimes do not easily tolerate the existence of an opposition party or the prospect of handing over power. Dictatorial regimes are quick to blame freedom of speech and multi-party systems because they are well-aware that these are the main sources of threat to their power.

On the other hand, honouring democracy entails allowing political criticism and the freedom of speech as safeguards against the monopolisation of power by a minority or an aristocracy. The need to shape opinions to attain enlightened votes implies a genuine right of expression, as well as freedom of information and communication. Nevertheless, democratic societies are not faultless in terms of freedom of speech; if they can have reasons for complacency due to their protected freedoms, they can also generate concerns that we will have to address.

## **2 Freedom of speech is not an unlimited right: it needs to co-exist with other rights or freedoms.**

As our Seminar Report points out, freedom of speech is not absolute. It needs to be balanced with other legitimate rights:

- Freedom of conscience and religion
- Protection of minors
- Struggle against violence and racial hatred (respect for human dignity)
- Public order and public safety (counter-terrorism, for instance)
- Respect for privacy
- Rights of minorities, which include respect for linguistic and cultural diversity<sup>1</sup>

We are living in an increasingly multi-cultural, multi-ethnic and multi-religious world. This pluralism has strong implications in terms of access to media for minorities. Let me reiterate here the noteworthy formulation of the European Court of Human Rights (ECHR): "Democracy does not limit itself to the constant supremacy of a majority opinion but demands balance which assures minorities fair treatment and which prevents any abuse of a dominant position"<sup>2</sup>.

Nonetheless, these legitimate rights also have their own sets of limitations. The ECHR applies two tests: are the limitations proportionate in a democratic society? Are they necessary? In short, in a democratic society, some limitations on freedom of speech are neither necessary nor proportionate.

### **3 In order to restrict freedom of expression or to divert it to their services, governments have at their disposal a multitude of means that are more or less sophisticated, or more or less concealed.**

#### **Legal means**

Some countries have instituted regulatory regimes that require authorisation or declaration prior to publication, and financial bonds maybe be imposed if deemed necessary by the authorities. Others require the media to conform to national interests, show consideration for public sentiments or religious morality, or to serve public interest – without providing clear definitions of what constitutes these various interests and restrictions. These conditions give governments a fearsome weapon. Others impose restrictive conditions for journalists who wish to attain legal status or accreditation.

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<sup>1</sup>For more information on Asia-Europe dialogue on related rights, please refer to the proceedings of the 6<sup>th</sup> and 7<sup>th</sup> Seminar in this Series, on migrants' rights and ethnic, linguistic and religious minority rights, respectively.

<sup>2</sup>Schneider v. Luxembourg, C 213/04, 07.10.2007

Censorship of written documents, drawings and artworks is also a telling sign. In truth, most dictatorial regimes can be recognised by the existence of censorship of media content and artwork. Also, let us not forget the legal regime governing the press. For instance, governments can easily prevent the media from denouncing corruption in a country by making it a criminal offence to violate the honour of civil servants or ministers.

The significance of the definition of press offences is also reflected in the ongoing debate on blasphemy laws. Let me focus on one example: France outlawed blasphemy in the 19th century and, after numerous debates, suppressed this offence with the major Law on the Freedom of the Press of 29 July 1881. This law protected the freedom of speech, while retaining a limited number of press offences related to defamation, insult, or incitation of racial or religious hatred.

This debate has nonetheless resurfaced on the international stage: the preamble which sets the rules of the new Human Rights Council of the United Nations, voted by the General Assembly in March 2006, refers to freedom of religion but leaves out freedom of speech as a fundamental freedom. As our Seminar Report points out, this Council adopted a resolution against religious defamation (A/CDH/4 L.12), acting on a proposal by Pakistan on 30 March 2007. With these elements in mind, the Advisory Committee on Human Rights in France has just vigorously protested against any attempts to re-introduce the offence of blasphemy within French law, or under international law.

However, Europeans are aware that this issue is a matter for debate in Asia, and sometimes also in Europe, and we will have to discuss it frankly.

### **Technical means**

Possibilities are numerous here. Governments have the technical means to do the following:

- Conducting checks on resources e.g. paper, hertzian waves or radio frequencies.
- Controlling information sources or broadcasting sources e.g. by regulating public information or press agencies; by creating a new media monopoly such as the Red China news agency established in 1931; or by limiting the technical means of the press, radio or television broadcasts.
- Blocking certain radio or television programmes, or restricting internet access. The "great firewall of China" is an example of censorship of online content.
- Providing false information to the public.
- Isolating the country from the rest of the world.

### **Financial means**

The economic environment and financial needs of the media are factors that make them vulnerable to the authorities. For example:

- There are special requirements for the distribution of newspapers (e.g. postage) that can increase costs.
- News and magazine publishers have the option of publishing more advertisements, which will enable them to reduce selling price and increase print runs.
- There may be existing state grants for the opinionated press, which can in turn affect their independence.
- Their businesses are susceptible to competition resulting from a smaller or larger number of authorised media agencies or channels, as authorities seek to liberalise the market or control ownership concentration.

### **Intimidation and violence**

There are many cases of journalists or cyber dissidents who are threatened, brutalised, imprisoned (like in cases of alleged spying) and even murdered. Their property and equipment may also be confiscated. Several studies by non-government organisations (NGOs), as mentioned in the Seminar Report, have highlighted these restrictions and commented indirectly on the state of freedom of speech all over the world. Mr. Robert Ménard of Reporters Without Borders (Reporters Sans Frontières) will probably raise this issue in his speech.

## **4 Other (non-governmental) threats to the interdependent relationship between the media and the freedom of speech**

These pressures can come from:

- Economic and financial interests of media conglomerates;
- Shifting of advertisements and spot announcements from traditional media (e.g. National and regional press) to the internet and search engines, along with an internationalisation of online advertising;
- Rise of the popular press (like the tabloids) and the trivialisation of media contents (e.g. Yellow journalism, emotive press, compassionate journalism and reality shows); and
- Self-censorship and passivity of journalists.

## **5 Freedom of speech is a persistent force and it will seek alternative channels when suppressed.**

**It gets around walls and seeks gaps with the help of committed stakeholders.**

Freedom of speech results from a struggle against pressures from governments by the stakeholders of civil society (political parties, trade unions, associations and NGOs, religious forces, media companies, consumer organisations, journalist pools and professional organisations etc.) and also in the public system (e.g. an independent judiciary to ensure effective appeal).

On the Roles and Relations of State-Civil Society, which one of our working groups will be discussing, we hope to consider these questions: Are there configurations that benefit the development of freedom of expression? Which ones are they? How can one encourage them? And what is the role of the various public or private stakeholders?

**Substitutes arise when freedom of speech is restricted.**

Clandestine media like the London radio played a key role during the struggle against fascism in World War II. In Eastern Europe, before the fall of the Berlin wall in 1989, information was provided by satellites and peripheral or seaborne radios (such as Voice of America). Today, there are even more alternatives: mobile phones; international news channels such as Al Jazeera (fifth most influential trademark in 1996); the internet, which brings freedom of speech across borders; and blogs like those used by the "fenqing" (angry youths) in China to express their unhappiness.

**Today, we have an easier connection with the rest of the world.**

International legislation aimed at breaking down trade barriers, along with the advent of digital technology, optical fibre and satellites, has made the dissemination of ideas and creative works easier, faster and cheaper. These transformations have changed the course of human history.

## **6 Originally conceived as a counter-power, the media has become a real power. The question is: who are they accountable to?**

When he theorised the running of democracy in the 18<sup>th</sup> century, French philosopher Baron de Montesquieu identified three authorities – executive, legislative and judicial – and asserted that each power needed to be checked and balanced by other powers. At that time, the press was neither looked upon as a counterweight nor as a power itself, because it was not effectively developed until the 19<sup>th</sup> century.

Today, thanks to investigative or political journalism, the press and media are contributing to the shaping of public opinion. From the 1960s, political analysts and psychologists

finally recognised the media's immense influence and classified it as a counter-power. More recently, with the evolution of television and the concentration of media power in the hands of a few, it has been conceived that the media, in reality, has become the fourth power, and is perhaps the most influential. This debate seems crucial to me: If the media remains an essential base of democracy, then they will at the same time be a power on the same level as the three authorities identified by Montesquieu. Problems arise when this fourth power is appropriated and used by political leaders as a propaganda tool, or by private individuals to forward economic interests. According to the findings of the International Criminal Tribunal for Rwanda (ICTR), for instance, radio broadcasts by Thousand Hills Independent Radio played a role in inciting the racial hatred that led to the genocide in Rwanda. Italy under Prime Minister Silvio Berlusconi's government also faced the debate surrounding the ownership of key media resources by a head of government.

### **What is the regime of responsibility governing this new power?**

Is the responsibility of the press commensurate with their new power? Can responsibility be reinforced through the training of journalists and the development of professional ethics, or through a system to enforce legal and financial responsibilities? Can we believe in self-regulation? On this subject, there is an interesting book by Jean-Luc Martin-Lagardette on accountable information, recently published by Media Corporate and Social Responsibility (CSR) Forum in the United Kingdom. It explores many debates regarding the control of the media: do we need independent monitoring and control authorities? What should be their composition (government, professionals or independent personalities), and do we need a mediator? We should also consider where the marker should be set between freedom of expression (with emphasis on the individual in western countries) and respect for community (especially in view of the importance of group identity and interests in Asia).

## **7 What is the desirable landscape for the media in a democratic society?**

### **The ideal landscape according to the EU**

Along with the advancement of science and technology, the media landscape experiences fast and permanent restructuring. However, few written documents have developed a vision of what the media landscape should be in a democracy. There is one element that needs to be considered in our debate without necessarily looking at it as a role model: the European Union has worked on this subject and, through a draft directive submitted in March 2007 on "Borderless Audiovisual", has made a point to define the pillars of the European audiovisual model. These five pillars are the following:

- Promotion of cultural diversity
- Protection of minors and consumers

- Pluralism (political, trade-unionist, religious, associative, national and international press)
- Struggle against racial and religious hatred
- Independence of national inspection bodies

It would be interesting to discuss whether these five pillars generate consensus and exhaust the subject, and then to consider how they can be commingled and successfully implemented.

### **How do we organise and ensure media pluralism?**

Media companies can be pressured by shareholders, like in the case of Yahoo! and Google in 2006, to respect freedom of expression. In a shareholders' resolution, the New York City Pension Fund, which holds significant shares in Yahoo! and Google, asked the two internet giants to respect freedom of speech when operating in countries that seek to restrict or monitor information.

In addition, is there a specific role of the public sector, where it does exist, in comparison with the private sector (for example, more space or time for political information, education, culture, support of cultural diversity)?

### **Can one regulate ICT and its disruptions?**

With digital technology and high-speed internet, we witness the multiplication of media made possible by lower costs, as well as a segmentation of targets and readerships (i.e. the growth of the specialised press). We also witness the appearance of a free press and of peer-to-peer information and data exchange on the internet. Video-on-demand is also on the rise, with a decline of scheduled television programming.

### **Are we faced with a totally new threat: the excess of information from multiple sources, and the fragmentation of the media?**

The younger generation is exposed to a diversity of media. Teenagers in France, for example, spend an average of four hours and seventeen minutes per day online and on mobile communication devices. There is also the rise of conversational media, interactive communication and personalisation of information. The problem of the digital divide is compounded when the older generation, who rely on traditional media forms, face difficulties in learning to use these new media channels and devices. This creates a dual digital divide, separating the rich from the poor, as well as the young from the old. The impact of the phenomenon, however, depends on interpretation: what Jean-Louis Missika calls "disruptive technology" is interpreted by Liu Xiaobo as a "quantum leap". The press now needs to invent a new business model to work across different media forms in order to reach their audience.

### **What is the future of political debate?**

The disintegration of the public stage and of the public space, with the internet replacing television as the dominant media, has desynchronised political debate. The 2006 labour controversy in France over the First Employment Contract (CPE) was a topic of discussion in over 30,000 blogs. Are we headed towards an inattentive but talkative public space where everyone broadcasts without listening? Or are we facilitating participative democracy? The "notbuyhouse" protest campaign in 2006 by Chinese blogger Zou Tao to fight against land speculation is another example of such a transformation. The political debate is migrating to new places that are not under the control of governments or traditional media conglomerates.

### **What about the future of journalism?**

In the new media landscape, amateurs now have the opportunity to become editors of media content. The distinctions between the professional and the amateur in journalism are now diminishing. An example is OhmyNews International, a South Korean online newspaper with the motto "Every citizen is a reporter". OhmyNews has an army of 40,000 "citizen reporters" generating content together with 70 professional journalists. During the 2002 Korean presidential election, it served as a platform for political debate. The success of OhmyNews shows the evolving profile of the journalist and the changing face of journalism.

We are living in a time of revolution. With so many complex and interesting issues to debate among us over the next two days, I am certain that our discussions will be fruitful and mind-blowing.

# SEMINAR REPORT

- Part I – Issues
- Part II – Working Group Reports

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## Executive Summary<sup>1</sup>

Countries in Asia and Europe are converging around the principle of freedom of expression, recognising not only its intrinsic value for realising everyone's full human potential, but also its indispensable contribution to developing tolerant, prosperous and harmonious societies. This was a key conclusion from the 8th Informal ASEM Seminar on Human Rights in Siem Reap, Cambodia, on 27-28 September 2007. The seminar, on "Freedom of Expression", brought together about 140 participants from governments and various sectors of civil society, representing 38 of the 43 ASEM countries, the European Commission and the ASEAN Secretariat.

The turmoil not far away in Myanmar loomed large in the background of the seminar and was never far from the participants' minds. France and Sweden, as the two co-

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<sup>1</sup>The views expressed in this publication are strictly those of the authors, and do not necessarily reflect those of the Asia-Europe Foundation (ASEF), the Raoul Wallenberg Institute or the French Ministry of Foreign Affairs.

The European Main Rapporteur is Kevin Boyle, Professor of Law at the University of Essex UK and a barrister at law with extensive experience of litigation before the European Court of Human Rights. He is Director of the University's Human Rights Centre. In 2001 -2002 he worked for the United Nations in Geneva as Senior Adviser to Mary Robinson during her last year as UN High Commissioner for Human Rights. He has also been a consultant to the United Nations on human rights issues. The Asian Main Rapporteur is Cherian George, a media scholar and journalist from Singapore. His research and writing focus mainly on social movements. He is the Acting Head of the Journalism & Publishing programme at the School of Communication and Information, Nanyang Technological University. Before joining academia, he spent 10 years as a journalist at Singapore's national daily, The Straits Times, where he wrote mainly on media and politics. (With contributions from Roby Alampay, Director, Southeast Asia Press Alliance, and Arnaud Dubus, Journalist, Le Temps and Liberation, who served as Working Group rapporteurs during the event.)

ordinators of this informal Human Rights dialogue, endorsed the European Union statement on Burma/Myanmar condemning the violence and urging the country's authorities to open a dialogue with the protesters. Both the European Union and the Association of Southeast Asian Nations (ASEAN) issued strong statements of concern over the loss of life resulting from the military clampdown on peaceful demonstrations. Events there brought home to participants the vital role of freedom of expression and free information flows in the timely circulation of news about human rights abuses. They were also a poignant reminder of how extreme restrictions on freedom of political expression and association can thwart the peaceful resolution of differences, increasing the likelihood of violent confrontation. The seminar convened four working groups for frank and in-depth discussion of a number of dimensions of freedom of expression. The working groups dealt with: political rights; cultural rights; roles and relations of states, civil society and international organisations; and the impact of information and communication technologies (ICT).

- Participants affirmed the continued relevance of Article 19 of the Universal Declaration of Human Rights (UDHR) adopted in 1948: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".
- There was no divergence of view on the positive contributions of this fundamental freedom to society. Moreover, despite valid criticism of concentration of media ownership, privately-owned media was still considered to play a positive role in the enjoyment of this freedom. All ASEM partners have embraced education as essential for progress in the information societies and knowledge economies of the 21st century. Quality education requires the fullest freedom of expression. In addition, freedom of expression is necessary for consolidating democracy, enhancing citizen participation, and achieving sustainable development.
- The key debates in the seminar, therefore, were not over the principle of freedom of expression, but the challenges of implementing this freedom in effective ways among ASEM partners.
- Freedom of expression and its corollary, freedom of the press, continue to be violated. The seminar heard of many instances of censorship and attacks on media workers, artists and human rights defenders, as well as subtler forms of state and corporate pressures on the media. Concern was also expressed about a trend of excessive concentration of media ownership in both Europe and Asia, at the expense of media diversity.

- The state has a significant role in guaranteeing freedom of expression. On one hand, this requires a commitment to minimise interference with the media. Public officials and public authorities must be open to robust criticism, especially when it relates to the conduct of their offices. Participants noted that the trend against making defamation by journalists an imprisonable offence strengthened press freedom. On the other hand, the state must take positive steps to ensure plurality of the media, and to open access to the means of communication by minorities. The state must uphold the rights of individuals, including artists, to express themselves, notwithstanding the objections of others.
- The importance of freedom of information or "the right to know" was underlined by many delegates. According to this principle, all information held by the government should be accessible to the public unless non-disclosure can be justified by an independent authority. Such legislation promotes transparency and good governance, and also affords public authorities legitimacy in the eyes of the public.
- Underlying freedom of expression and information is a commitment to the rule of law and democratic society. Independent courts have a crucial role in finding the legitimate balance between freedom of expression and competing rights and public interests.
- ICTs provide powerful tools to seek, receive and impart information and ideas, and represent an unprecedented opportunity to enhance freedom of expression for all. The internet is not only a tool for individual empowerment, but also for building of communities and for the achievement of human security and development goals.
- While the growth of internet use has been phenomenal in all ASEM countries, it was acknowledged that the digital divide still exists within and between countries, denying the benefits of the new media to millions of the poor, the elderly, and those who do not use the dominant languages of the world.
- There is popular and official concern in all countries about the abuse of ICTs, such as child pornography, incitement of hatred, violence and terrorism, and fraud. The seminar was divided as to whether these amount to qualitatively new risks, or simply old risks in new manifestations. But any form of prior censorship of online content by the state or with complicity of internet companies was firmly rejected. National legislation against these crimes should be strictly enforced. In addition, governments should support media literacy programmes, especially in schools.
- Predictably, the question of harmonising the exercise of freedom of religion and freedom of expression provoked a range of views. Some argued that

freedom of expression should not extend to insult, satire or offensive comments with reference to any religion. Some argued to the contrary, that while people should treat others' beliefs with respect, religions are powerful forces in society and the law should not exempt them from criticism. There was more agreement on the need to prohibit hate speech, namely incitement or advocacy of hatred of others on grounds of their religion, belief or ethnicity. In fact, international law requires all states to prohibit such speech.

## Recommendations

A range of recommendations emerged from the seminar.

### International

1. All ASEM partners should ratify the International Covenant on Civil and Political Rights (ICCPR), and its First Optional Protocol. Article 19 of the ICCPR enshrines freedom of expression as a rule of international law, and offers the most important guarantee for the enjoyment of freedom of expression in all its aspects at the national level.
2. ASEM partners might consider requesting the Human Rights Committee, which monitors the implementation of the ICCPR, to prepare a new General Comment to guide states on the scope of Article 19's freedoms, duties and responsibilities. The last General Comment, adopted in 1983, predates the digital revolution in media and communications.
3. ASEM partners should disseminate and abide by the UN Declaration on the Rights of Human Rights Defenders. Freedom of expression is one of the crucial rights identified in the Declaration, to enable human rights organisations to fulfil their advocacy and monitoring roles.
4. ASEM partners should ratify the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention on the Promotion and Protection of the Diversity of Cultural Expression.
5. International organisations should continue their capacity-building programmes, specifically in democratising countries, to translate international frameworks into national legislation.

### Regional

6. The regional human rights systems of Europe offer significant protection for freedom of expression, among other rights. It was strongly suggested that Asian

ASEM partners would benefit from a similar regional Human Rights mechanism. ASEAN's intention to create a human rights mechanism should be supported by all ASEM partners. The host of the meeting, the Prime Minister of Cambodia Samdech Hun Sen, strongly endorsed that idea in his address to the participants.

### **National**

7. ASEM partners should, where they have not done so, incorporate the Universal Declaration and the International Covenant on Civil and Political Rights (ICCPR) into their constitutions and national law and, in connection with the emphasis of this dialogue on freedom of expression, Article 19 in particular. Article 19 does not treat freedom of expression as absolute. But, any restrictions or limitations must conform strictly to those permitted by international law. National legislation should not have vague restrictions but precise ones, to avoid arbitrary interference with freedom of opinion and expression, and freedom of the media. In particular, overbroad counterterrorism legislation can threaten freedom of expression and related rights such as privacy.
8. Each ASEM partner that has not done so should establish a national human rights institution (NHRI) guided by the Paris Principles on the functions, composition and powers of these bodies.
9. ASEM partners should introduce freedom of information or access to information legislation where they have not already done so.
10. ASEM might convene a judicial colloquium to enable national judges to exchange experiences as reflected in their case law or jurisprudence on freedom of expression issues. The European Court of Human Rights has developed a remarkable corpus of judicial principles on the protection of freedom of expression and the media. There is also a rich jurisprudence developed by national courts in Asia. The judiciaries of each state have much to learn from each other.
11. In ASEM countries, media ownership structures should be monitored and media diversity promoted. Public broadcasting systems (both state-owned and public access media) and community media can play a role in countering the dominance of commercial media.
12. There is no single preferred media regulatory regime, but regulation should be built on the principle of ensuring maximum freedom of expression. In particular, regulatory authorities should be independent of political and economic interests. They should be transparent, accountable and democratic. The membership

of such bodies could include representatives of civil society. ASEM could convene an expert conference of audio-visual regulators with a view to exchange of experience.

13. All media have duties and responsibilities to society. Some ASEM countries have self-regulation systems to ensure their accountability to the public, such as press councils and professional codes of ethics for journalists. ASEM should promote such voluntary systems, and the media must recognise that there is a serious onus on them to make these systems effective.

## Overview

As delegates to the 8th Informal ASEM Seminar on Human Rights met in Cambodia to exchange views on freedom of expression, the same issues were being acted out in the streets of Myanmar. News of peaceful protests being suppressed by bloody force trickled through via satellite television, websites, email and mobile phone text messages. Some details may have been hazy at that stage, but the message to the participants was clear: freedom of expression was not some arcane or abstract concept, but a fundamental necessity for the healthy functioning of human society. Conversely, denial of this basic freedom robs society of the best means for the peaceful resolution of differences, increasing the likelihood of violent, debilitating conflict.

The Asia-Europe Foundation's Culture and Civilisation Dialogue ("Talks on the Hill") in September 2006 noted: "the greater good for society as a whole goes hand-in-hand with increased levels of freedom (both of expression as well as religion). Freedom leads to creativity and innovation, which leads to a richer and more prosperous and stable society". At the 8th Informal Seminar's plenary discussions and working groups, participants concurred on the fundamental nature of this freedom and its importance for both individuals and societies. They cited many positive contributions of freedom of expression:

- It contributes to innovation, exposed diversity of opinion, and fuels economic development.
- It is vital for democratisation, ensuring that populations were included in decision making.
- It is vital for accountability of government, discouraging oppression and abuse of power, and denouncing corruption; it is good for governments too, keeping them in touch with reality.

- It creates citizens in a democracy by enabling them to speak their minds and to participate in society; it empowers individual men and women.
- It helps prevent conflict and promotes social cohesion and justice by combating ignorance, and promoting understanding and tolerance; freedom of expression is accompanied by a set of responsibilities, in particular respect for others and respect for communities
- It plays a significant role in the attractiveness of a country for foreign investors and visitors.

Participants rejected the commonly aired view that freedom of expression was only relevant to economically developed countries that had satisfied more basic needs. On the contrary – as pointed out by Cambodian Prime Minister Hun Sen in his welcome address – communication rights had to be a vital part of any socio-economic development strategy, for only then would development benefit the people who needed it most. There is a strong consensus among ASEM members – indeed, within the entire community of nations – that education is the key to human progress. It is also widely accepted that education in the 21st century is not about top-down provision of some fixed stock of knowledge, but about imparting the tools for independent exploration, innovation and creativity – and not just to the elite but to everyone. ASEM members see their futures depend on developing enquiring minds. Such a transformation is inconceivable without freedom of expression.

## **Background: Definitions And International Norms**

The point of departure of the Seminar was Article 19 of the Universal Declaration of Human Rights (UDHR) 1948:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

It has been 60 years since this text was drafted. Yet, it still captures the ideal of individual freedom of expression for all. It remains a powerful and relevant statement of principle for the 21st century. Freedom of expression means the freedom, without interference or penalty, to speak one's mind. Everyone has thoughts, ideas and opinions and everyone is entitled to have them without fear of suffering prejudice, discrimination or oppression. To express or to communicate those thoughts, ideas and opinions without interference from the official authorities or others is an equal component of the right to freedom of expression. The freedom includes the right to hear other views and to exchange

ideas and information with others. It also includes the right to inform oneself and to be informed. Views without information are of as little value as speech without an audience. The protection afforded under human rights standards to all media – modern mass electronic and print media and the new information communication technologies – is justified because of their role in making people's freedom of expression meaningful. All such means of communication provide access to sources of information, and to opportunities to exchange different opinions and ideas.

As with all freedoms, freedom of expression has both its individual and its collective components. Human beings communicate with others, not with themselves. Thus, the audience is an element of any communication and shapes the parameters of the freedom. One consequence is that freedom of expression cannot be absolute: it cannot be exercised without regard to its effects or consequences for others. The perennial problem is how to establish rules of communication that enable and encourage the maximum freedom of individual expression and media freedom while taking account of the responsibilities that are integral to the exercise of the freedom. The international standards that have been developed offer principles and norms that should underpin any such rules. But it has not to date proved possible for states to agree on a comprehensive international legal framework on freedom of expression or media freedom. Hence, as was recognised at the Seminar, the high importance of building national legal and institutional protection for this freedom that incorporates the values and principles that have been agreed by the international community.

### **Freedom of the Press**

Partly as a result of the failure to agree on comprehensive standards that would have explicitly addressed freedom of the press or media in the 1940s, there is no formal recognition and no explicit protection for the printed press and other media in the international human rights standards. The freedoms and the obligations of the press have been developed from the individual rights and freedoms contained in Article 19 of the Universal Declaration and the International Covenant on Civil and Political Rights (ICCPR) as well as the equivalent norms in regional human rights regimes such as the European Convention on Human Rights and Fundamental Freedoms. National constitutional and legislative provisions, however, frequently recognise press freedom as a separate value to freedom of expression. Historically, international and national standards on freedom of expression were shaped largely by the struggle for press freedom, and against government licensing and censorship. Freedom of the press, while intended to cover the printed word and newspapers, is understood today to embrace all media, including modern means of communication such as radio, television and the internet. Media freedom is thus inseparable in practice from the enjoyment of freedom of expression in society. This is well expressed by the European Court of Human Rights in respect of political debate:

"Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. In particular it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the core of the concept of a democratic society." (Castells v. Spain judgment of 24 April 1992).

### **Categories of Expression: Political, Cultural, Commercial**

In its case law over the last forty years, the European Court of Human Rights has evolved a conception of the scope of expression and communication to embrace different categories – political, cultural or artistic, and commercial – although these categories can be overlapping. The European Court has in practice offered the highest protection from interference or restriction to political speech and, in turn, less to artistic or commercial speech (such as advertising). In a rare difference of view, the Human Rights Committee, which oversees the implementation of the International Covenant on Civil and Political Rights, has rejected this implicit hierarchy of protection:

"The Committee does not agree either that any of the above forms of expression can be subjected to varying degrees of protection with the result that some forms of expression may suffer broader restrictions than others." (Ballantyne Davidson and McIntyre v Canada, 31 March 1993).

Nevertheless, the detailed regulation of commercial advertising – for example the prohibition on advertising cigarettes on grounds of public health, or efforts to prohibit TV advertising of sweets and junk food to children – is starkly different to the minimal regulation of political expression. The denial of artistic and intellectual freedom, and the suppression of creative works have been a staple feature of history, as was the later recognition of such works and the rehabilitation of their creators. Under the new international human rights standards of the 20th century, artistic freedom of expression is expressly recognised and protected. The European Commission on Human Rights commented in a 1986 case that "freedom of artistic expression is of fundamental importance in a democratic society. Through his creative work the artist expresses not only a personal vision of the world but also his view of society in which he lives. In that sense, art not only helps shape public opinion but is also an expression of it and can confront the public with the major issues of the day." (Muller and others v. Switzerland, 1986). However, in the few cases which have come before the European bodies complaining of censorship, they have not interfered with national decisions that condemned the impugned works as obscene or blasphemous.

### **Access to Official Information or Freedom of Information Laws**

The most striking advance in the norms of freedom of expression over recent years has been the growth of the freedom of information movement. Governments across all

regions have established "the right to know" through passing specific legislation. Rather than a "secrecy law" that allows a state to classify categories of information and restrict access to them, an "access to information law" works on the principle of maximum disclosure: all information should be made public as a matter of principle, unless it fulfils certain specific and limited criteria justifying non-disclosure. Democracies, both new and old, have begun to understand that legislating on the principle that information should be made available, affords governments and public authorities' legitimacy in the eyes of the public.

In Europe, there has been an increasing evolution in the field of freedom of information over the past two centuries, with exceptional growth of legislation in the 1970s. India, Thailand, Japan and South Korea all have national laws on freedom of information in place, as do all European countries and some Central Asian states (Kyrgyzstan, Uzbekistan). In Thailand, the right to access information is directly enshrined in Section 58 of the 1997 Constitution, while both the Japanese and Indian Constitutional Courts have held the right of freedom of information to be part of the guarantee of freedom of expression. In October 2006, the Inter-American Court of Human Rights became the first international tribunal to hold that there was a fundamental right to access government held information.

Often, initial enthusiasm for passing access to information laws has not been met with the political will necessary to propel drafts through parliament, or to implement them when they come into force. In the United Kingdom, a Freedom of Information Act was passed in 2000 but did not come into force until 2005. There implementation of such laws has also been limited in some Asian countries. The Seminar urged the extension of this right for all ASEM partners and its effective implementation in practice.

Campaigners increasingly call for the right to access information to be applied more widely, to require, for example, international financial institutions (IFIs) to disclose information that falls within the public interest. The Asian Development Bank's new disclosure policy is considered one of the most progressive to have been adopted by any IFI. The Asian Development Bank and Organisation for Economic Co-operation and Development (OECD)'s Anti-Corruption Initiative for the Asia-Pacific Action Plan integrating freedom of information strategies has been agreed by most countries in the region.

### **Links with other Fundamental Rights and Freedoms**

Freedom of expression is but one of a number of the internationally recognised "fundamental freedoms". These include freedom of thought, conscience, religion or belief, freedom of association, and freedom of assembly, which are also set out in the UDHR. The interdependence of these freedoms was noted in the Seminar. Thus the relationship between freedoms of expression and thought, conscience, religion

or belief was much discussed. The freedom of religion requires the guarantee of the freedom to communicate, to publish, print, broadcast etc. Among the most frequent victims of the denial of freedom of expression are religious minorities whose rights to manifest their beliefs are denied. Freedom of association, which includes the freedom to establish political parties and associations, has been described by the European Court as a collective form of freedom of expression.

The UDHR enshrines a right of participation in public life. Article 21, sometimes termed the "democracy" right, is highly related to freedom of expression. A dominant role of the guarantee of freedom of speech and of the media is to provide the conditions for effective participation in public life, including participation in government.

Democracy nourishes itself from public debate, which in turn requires freedom of expression for its full development. The most widely-accepted justification for the protection of the freedom of expression and freedom of all media is directly linked to the right of the citizen to know and the right to participate in government and public affairs in ones own country. At the UN World Summit in 2005, world leaders reaffirmed that democracy is:

"a universal value based on the freely expressed will of people to determine their own political, economic social and cultural system and their full participation in all aspects of their lives."

In the Vienna World Conference on Human Rights in 1993, the interdependence of development and *all* human rights – civil and political as well as economic and social rights – was recognised by states. But it was the influential work of the UNDP's Human Development Reports and the renowned Indian development economist, Armatya Sen, in such works as *Development as Freedom* that ensured recognition of the role of creative freedom for development. Development assistance, it is now recognised, should not only be directed at economic development, its traditional focus, but should also be concerned with the expansion of human capabilities and choices. Securing people's human rights, including guarantees of civil rights and political freedoms, enables them to take control of their own development and secures the democratic empowerment of women and men. In the context of freedom of expression, therefore, progress on the Millennium Development Goals (MDGs) is a vital dimension of the global achievement of this freedom. In particular, the efforts to combat illiteracy and to implement the MDG on education – to give all children access to primary education – advances the human capacity to enjoy freedom of speech and the right to participate.

### **The International Legal Framework**

The intention in drafting the Universal Declaration was to achieve "a common understanding of these rights and freedoms", so that universal respect and observance

of them might be realised. The Declaration was the first step in the search for a common understanding of rights and freedoms. It was followed by two international treaties: the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights along with the latter's Protocols. These documents are known collectively as the *International Bill of Human Rights*. The great majority of member states of the United Nations have ratified the two Covenants. All European member states of ASEM have ratified these international human rights agreements. A clear recommendation of the Seminar was that those Asian states which have not ratified either or both treaties should proceed to do so. However all States have accepted the Universal Declaration of Human Rights as an unchallengeable statement of normative principles as regards all human rights.

### **International Covenant on Civil and Political Rights – Article 19**

The formulation on freedom of expression adopted in Article 19 of the UDHR provides the foundation of a fuller definition in the International Covenant on Civil and Political Rights (ICCPR), also numbered Article 19. In turn, the two global texts are followed closely, although not identically, in the regional human rights instruments, including the European Convention on Human Rights, in their guarantees of freedom of expression.

According to Article 19 of the ICCPR:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals

Article 19 speaks of freedom of opinion as well as freedom of expression. Everyone is entitled to hold opinions or views, including political or social ones, without state interference. This provision was intended to recognise that human beings have diverse and differing views on all kinds of issues and to underscore that no one can be coerced

into thinking in a particular way or to believe any particular ideology. Nor should any one be prejudiced or discriminated against because of their views or opinions. The freedom to hold opinions may not be restricted. In the words of the Human Rights Committee that supervises the implementation of the ICCPR, "It is a right to which the Covenant admits no restriction". In other words people may think what they like.

The Covenant's Article 19 paragraph 2 sets out the positive meaning of freedom of expression under international law. Its scope is extensive. The right is defined as including freedom to *seek and receive* information and ideas as well as the freedom to *impart* information and ideas of all kinds. The activities of seeking and receiving are guaranteed as prerequisites to the freedom to impart, which formally is the activity of expression.

*Freedom to seek* includes active and investigative journalism in the public interest. At the same time, the protection of privacy and private life is addressed independently in Article 17 of the Covenant. *Freedom to receive* has been interpreted by the European Court of Human Rights in respect of the mass media as a *right* of the public to be informed and the *duty of* mass media to impart information to the public. The definition includes the right to receive information and ideas "without regards to frontiers", in other words across the borders of the state. The clause was intended to outlaw forms of censorship such as the Cold War practice of radio jamming of foreign broadcast signals and extends in today's digital age for example to the blocking of access to internet sites. It also indicts systems of censorship which restrict the import of media products, such as films, publications or other communications, on no other ground than that they are foreign. Everyone is entitled to access information and ideas of all kinds, wherever they were generated.

*Freedom to impart* information and ideas extends to all kinds of information and ideas through any medium of choice including "orally, in writing or in print, [or] in the form of art". The scope of the freedom to impart is well conveyed in the classic words of the European Court of Human Rights interpreting Article 10, the freedom of expression provision of the European Convention on Human Rights (ECHR):

"Freedom of expression constitutes one of the essential foundations of [a democratic society], one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (Handyside v United Kingdom, judgment of 7 December 1976).

### **Permissible Limitations on Freedom of Expression**

The limitation clause in Article 19 ICCPR, paragraph 3 and the equivalent paragraph (2) of Article 10 of the European Convention, are the heart of the matter. As the Human Rights Committee has commented:

"[i]t is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right". (General Comment 10, Article 19, Nineteenth Session, 1983).

A major issue in all countries concerns the rights and wrongs of restriction on expression, information and communication. International and national guarantees of freedom of expression offered to individuals and the media can be and are abused. Equally, the power of government acknowledged under international and national law to restrict freedom of expression can be and is abused. The goal is a system that can avoid both these abuses, a system that enables the maximum freedom of expression to the individual and to media, while at the same time ensures the minimum necessary interference, by the state or others, to police responsibility and duties in the exercise of these freedoms.

As noted in the Seminar, no single regulatory template is available to apply across different countries, legal systems, and cultures. The ASEF Briefing Paper "Press and Artistic Liberties in ASEM: Country Profiles" provides a useful conspectus of the range of limitations, and of the regulatory agencies that implement them in ASEM countries.

### **Established Principles on the Application of Restrictions**

However, there are principles of international law which govern the legitimacy of any restriction on any of the permitted grounds of the freedom of expression.

#### **1. Legality**

Any interference with free speech or media freedom must be based on law. That means, for example, that a restriction cannot be legitimate when it is conceived on the arbitrary whim of an official. National law must set out the ground of restriction in clear terms, such that it is accessible to those who are affected by it.

#### **2. Legitimacy**

The interference or restriction must follow a legitimate purpose that is based on one of the exhaustive grounds of restriction permitted by international standards, such as those set out in Article 19 of the ICCPR or the somewhat more extensive grounds covered in Article 10 of the ECHR.

3. Proportionality

The interference must be "necessary" in the sense that there is "a pressing social need" for the interference and that the measure taken is the minimum required. The ECHR speaks of "necessity in a democratic society" whereas the ICCPR speaks only of necessity. However, in practice the assessment involved is the same, given the accepted nexus which exists between democracy and the protection of all human rights, including freedom of expression.

4. Presumption of freedom

Freedom is the rule; its limitation the exception. In the Sunday Times Case, for example, which involved a claim of justified judicial restriction on the publication of information by a newspaper, the European Court of Human Rights noted that freedom of expression is not a right that is to be balanced equally with the permissible restrictions. It is rather a right that is subject to a limited number of restrictions that must be narrowly construed and convincingly justified, ultimately to a court. The court starts with a strong presumption in favour of the freedom. The onus is on the authorities to justify why it is legitimate to restrict it.

### Grounds for Legitimate Restriction in ICCPR Article 19

#### Duties and responsibilities

Paragraph 3 of the Article 19 contains the unusual phrase "*special duties and responsibilities*" introducing the grounds of restriction. No other right in the Covenant directly invokes the idea of duties or responsibilities in its formulation. The intention is to recognise the need for balance between the freedom given to independent mass media and concern over the possible abuse or manipulation of its power and influence.

#### Respect of the rights or reputations of others

1. Defamation

The protection of reputation concerns protection from defamation or the publication of untruthful facts about another, which injures reputation in the eyes of others. This limitation is not in principle contested as illegitimate even in the United States (US), which adopts the most absolutist position on the priority of speech over other rights and freedoms. Nevertheless, the trend has been to ensure that it is narrowly targeted on deliberate telling of falsehoods about individuals. Where in the process of acting as 'watch dog' on public affairs, in a situation where a journalist includes mistakes of fact that are incidental to the story, the freedom of expression will override the protection of reputation. The European Court of Human Rights and national European courts will give greater protection to what is classified as political speech. The US concept of public figures include politicians, officials who exercise public

functions, or 'celebrities' who court public attention, has been highly influential in European thinking. A clear distinction is made between the expression of opinion critical of others, which are treated as value judgments not capable of being proved and therefore not subject to restraint under defamation laws, and statement of facts which are.

## 2. Criminal defamation

In many countries, to defame another is not only to make the person liable to pay damages of compensation to the person defamed, but can also entail liability to criminal punishment. This is the case in Europe and Asia. The trend, however, has been to abolish such laws as constituting a disproportionate response that can inhibit vigorous reporting by the media. A further trend in narrowing the scope of defamation proceedings is seen in the criticism of laws which allow the Head of State, the State, or its agencies to be defamed as such. The state or government should not have a reputation to protect in this way, and it should respond to criticism through refuting it rather than seeking to either recover damages or to punish critics. A similar critique can be made of laws of insult, whereby the law seeks to protect the dignity of office holders, such as heads of state or heads of government. These can be operated to prevent any criticism or challenge to their policies or actions (*lèse majesté*). An important recent judgment of the Constitutional Court of Indonesia on 17 July 2007 declared unconstitutional articles in the Criminal Code, known as "hate sowing" (*Haatzai Artikelen*) offenses. These articles, an inheritance from colonial times, made it an offence to give "public expression of feelings of hostility, hatred or contempt toward the government" and prohibited "the expression of such feelings or views through the public media".

## 3. Privacy or private life

The right to private life is independently protected under Article 17 of the ICCPR as well as Article 8 of the ECHR. Laws and penalties which restrain the search for and the publication of private information by individuals or more typically media organs, operate as legitimate restriction on freedom of expression and publication. The restriction on publication cannot be absolute. It is in the public interest to expose wrongdoing, crime and corruption and that is arguably a vital function of the media. But the widespread invasion of private and family life in search of scandal and sensation, which is typical of much mass media across the world, is not legitimate.

Responses to wholesale disregard for the privacy of others by the media vary between countries. The European standard has recently been firmly set down by the European Court of Human Rights in the *Von Hannover v Germany Case*. Princess Caroline of Monaco waged a long campaign before the German Courts over paparazzi photographs published in tabloid magazines. The Constitutional Court held that

certain photographs of her and her daughter should not have been published, but others showing the Princess in public alone or dining with friends could be published as she was a person of 'contemporary history' or a celebrity. The European Court disagreed and held that her right to privacy had been invaded in respect of those photographs as well. In balancing the protection of private life against freedom of expression, the decisive factor should lie in the contribution that the published photographs and articles made to a debate of general interest. The photographs showed Caroline von Hannover in scenes from her daily life, and had been taken without her consent or knowledge. The photographs made no contribution to a debate of public interest. She was not a person fulfilling a public function and the general public did not have a right to know about how she behaved in her private life.

#### 4. Extreme speech

Control of extreme or abusive expression, commonly termed hate speech, presents a challenge to all countries. The Internet has added a global dimension to the availability of propaganda advocating hatred of others or advocating violence against others. The Internet has also become the medium of choice for terrorist propaganda. Such content is denied protection under freedom of expression standards. Indeed, under the ICCPR, not only is hate speech sanctioned under Article 19, states have a duty to prohibit such speech under Article 20 of the Covenant. In the case of racist speech, the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination reinforce that duty.

Article 20 of the Covenant imposes separate commitments on states concerning the restriction of war propaganda and hate speech. Article 20 (2) ICCPR reads:

"Any advocacy of national racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law"

#### **Other Grounds of Legitimate Restriction**

It was not possible to examine all such grounds – public order, public morality and national security – in the Seminar. But what each have in common is that they are public interest limitations on freedom of expression and are, if anything, more vulnerable to abuse than limitations based on the competing rights of individuals. In particular, the invocation of national security by states has a well-documented history in all regions of the world of leading to the subordination and even the elimination of freedom of expression and press freedom. The current global context of terrorism and counter-terrorism stemming from the attacks of 9/11 in the United States has led to many instances of restrictions on freedom of expression and information. The United Nations and other bodies have continuously stressed the need to respect human rights in the

campaign against terrorism. In 2005, the Council of Europe adopted a *Declaration on freedom of expression and information in the media in the context of the fight against terrorism*. This document provides a useful check list of the risks facing freedom of expression and journalism, including for example the tendency to equate media reporting on terrorism with support for terrorism, the spread of governmental secrecy and surveillance and the denial to journalists of access to information on security grounds.

### Indicators

Monitoring of implementation is essential for progress in freedom of expression. The need for more research to develop more extensive and agreed indicators of progress was discussed and endorsed in Workshop 3. Various indicators serve as tools for such monitoring. There are no universally accepted, standardised indicators to measure progress in the implementation of freedom of expression norms. While freedom of expression is frequently included as an indicator necessary to demonstrate the status of democracy within a state, little attention has been paid to the positive indicators that could be used to measure the experience of freedom of expression itself. One of the weaknesses of freedom of expression activism is that it has traditionally focused exclusively on restriction and violation. Even then the restrictive effects of regulatory structures – including the market mechanism – are frequently left unmeasured, because they are seen as the natural or default state of affairs.

Justifiably, most monitors focus on state actions that restrict the flow of information and ideas by means of physical force against individuals, such as killings, torture and imprisonment. Although it is important and essential to measure violations like the killing of journalists, it often relates exclusively to media and the press. This is not surprising since such data is readily available and easily quantifiable, and because restrictions on press freedom are more likely to be publicised by the media outlets themselves.

Other dimensions of freedom of expression – for example rates of literacy, the status of artistic expression (including artistic policies), education policies, or access to broadcast media for minority languages – are usually overlooked. Generally, the relationship between freedom of expression and empowerment of people, for example, is understudied or ignored. A broader perspective of freedom of expression could be taken through indicators that measure qualitative factors, such as media diversity in an era of global media that reflect crucial issues about access, content and ownership. Nevertheless it was also agreed that the strengthening of guarantees of freedom of expression has proved to be an evolutionary process. It is clear looking back a generation in European and Asian countries that there is greater diversity in the means of communications. While there remain many exceptions there have been real advances in the experience of ordinary people in enjoying freedom of expression in both regions.

# WORKING GROUP REPORTS

- Working Group 1: Political Rights
- Working Group 2: Cultural, Religious and Minority Rights
- Working Group 3: Roles and Relations of State – Civil Society, International Organisations
- Working Group 4: Freedom of Expression and ICTs

The Seminar broke into four simultaneous working groups which met throughout the second day. Although four different themes related to freedom of expression were addressed in the workshops, it was both inevitable and constructive that there was a degree of overlap in the issues debated as well as in the recommendations which emerged from the Groups.

## **Working Group 1: Political Rights**

The coincidence of the ASEM seminar and the crisis in Myanmar provided a troubling background for the participants' discussion of the freedom of political expression. The violence in Yangon provided a sharp context in considering what human rights and freedom of expression can foster and what the deprivation of those rights can produce. A genuine and healthy environment for freedom of expression can offer the conditions to build understanding between different ethnic groups, and strengthen tolerance not only within but between societies. Freedom of expression improves governance and development. It gives voice to the voiceless, lifts minorities and vulnerable sectors, whether their isolation is based on religion, ethnicity, gender, economic status, or culture. Freedom of expression allows everyone to be heard and allows the true wisdom of society to emerge, making society stronger and more stable.

### **Freedom of political opinion**

Freedom of opinion is a component of the international guarantee of freedom of expression. Everyone has the right to hold opinions, including political opinions, without interference. There are legitimate restrictions on speech, but there are none on holding opinions. However, such freedom is frequently denied in practice and the diversity of opinion, especially political opinion and concerns of the minority, are often not reflected in the media.

### **Freedom of expression and other rights and freedoms**

The participants debated how the enjoyment of freedom of political expression was challenged by the weaknesses/absence of other basic human rights – such as freedom of assembly, and freedom of association – and a weakness in the overall state commitment to human rights and democracy. Freedom of expression is inextricably linked to access to information, press freedom, freedom of assembly and association. Democracy itself is intimately related to freedom of expression as well as to free and independent journalism. These rights and freedoms are essential to enable democratic opinion to be expressed through participation in political movements or parties, and in ensuring free and fair elections. Freedom of expression is not just for journalists. It is a right of all citizens to enable them to speak out for their own welfare, to protect and promote good governance, and to take part in society.

### **Development and freedom of expression**

Freedom of expression is not a luxury that is irrelevant to developing societies. On the contrary, it is vital for development, which in human rights terms encompasses economic growth, as well as social and political progress, and individual empowerment. Freedom of expression, in short, is vital for the nation-building aspirations of the people. Some participants invoked the thinking of Indian economist, Amartya Sen, who had famously demonstrated that no country with a free press had experienced famine, and who had also demonstrated that freedom, including civil and political freedoms, were both a means and an end of development. The point was also made that economic development depended more than ever on knowledge economies and an educated population. Education required a society and government that believed in freedom of expression and that encouraged the creativity and participation of all citizens.

### **International standards**

Given the crucial functions of freedom of expression in society, it is imperative that the protections offered to freedom of expression in international law be translated effectively into national law and policy, along with adequate mechanisms for implementation. Freedom of expression is not a matter of government policy or discretion. Rather it is a principle of universal human rights. Yet these international standards are often inadequately recognised in law, policy and practice on freedom of expression. The international standards also include the grounds of limitation of the freedom, which may be necessary to invoke. The Group discussed limitations on the media, especially with respect to privacy of individuals. Even politicians can claim that the media must respect their private personae, even if they are rightly subject to greater scrutiny by the press than any other citizen. Governments, however, should not over-react to criticism or comments in the press. Democracy requires robust exchanges of information and political or other opinions, even where there is a degree of exaggeration or inaccuracy. The media has a duty to the society to act as a watch dog over public affairs especially with regard to the acts of government officials and politicians.

On the other hand, the argument was advanced that we must respect that all societies are different, and each country is best placed to reflect the nuances of their own histories and cultures; to determine what is good, what is bad, and what is best for the consumers of information in their societies. Freedom of expression, for example, is not intended to protect child pornography. Nor are there universal models on precisely how to balance freedom of political expression with laws which punish hate speech, incitement to violence, or even incitement to terrorism. But when it comes to national security issues, governments should proceed cautiously in crafting policies. Governments must acknowledge and be aware that concerns over national security can easily impinge excessively on freedom of expression. Surveillance, for example, can encroach upon the privacy of citizens. Not only can it have a chilling effect on

journalists and what they write, it can affect ordinary citizens in their online behaviour and their communications with fellow citizens.

Given the complexity of balancing freedom of expression with other rights and public interests, the importance of the rule of law and independent courts was emphasised. Any limitation must be set down in law, in advance of its enforcement. Courts must be left to calibrate proper balances where rights are in conflict, and they must be free to do so without fear of interference from the state or from powerful private interests. Any penalty imposed on media should be reasonable and proportionate. Pre-publication censorship of media by government agencies is not compatible with freedom of expression, nor is denial of access to or blocking of sites on the Internet. At the same time, the issues involved are not only for the courts. More needs to be done in both Europe and Asia to encourage exchange and discussion on freedom of expression between journalists and the media industry, civil society and parliamentarians.

### **Media diversity**

The working group discussed the question of concentration of media ownership within countries and across frontiers. This was also a theme raised in other workshops. A threat to freedom of expression, especially to the individual's right to receive information and ideas of all kinds, came about from excessive concentration of ownership of media. The state was said to have a duty to work for diversity of media and pluralism in communications.

### **Inter-regional co-operation**

The group recommended that international bodies such as the Human Rights Committee or the Special Rapporteur on freedom of Expression, as well as regional bodies should be involved in promoting and advising governments in ASEM countries on the best practices and policies to advance freedom of expression and develop democratic societies. Where necessary, there should be support for infrastructural developments and information technology. Support should also be offered for capacity building of independent judicial institutions and independent media, especially media serving minority language groups. Political rights were advanced also by freedom of information or access to information laws. All ASEM partners might share experience with access to information laws. Civil society in general, and in particular organisations working for freedom of expression, media monitoring and human rights education, should be given full support and, where appropriate, public funding.

### **Independent media regulatory bodies**

The working group debated at length the importance of establishing sustainable independent bodies to undertake the essential tasks of regulating everything from public broadcasting, assigning frequencies, and fixing of postal tariffs for publications, to the allotment of air time and advertising space for campaigning during elections etc.

In addition, self-regulatory bodies for different media sectors should be encouraged. All such bodies can strengthen media independence as well as enhance the environment for democracy. There is a wealth of experience and lessons to be shared from Europe with such bodies. ASEM might consider convening a conference of regulators from the two regions on the regulatory challenges for freedom of expression created by the multimedia environment of the 21st century.

## **Working Group 2: Cultural, Religious and Minority Rights**

Freedom of expression is a universal right exercised in a world of diverse beliefs and values. This creates a perennial tension: one person's self-expression may offend another. How to resolve this tension has long been the subject of intense debate. The preceding year's Informal ASEM Seminar on Human Rights – focusing on Ethnic, Linguistic and Religious Minorities – underlined the sensitivities surrounding this issue and noted that violent conflict is often associated with the mishandling of diversity. The 2006 seminar called for more open and intensive dialogue about minority rights in informal fora. At the 2007 seminar on freedom of expression, the working group on cultural rights provided such an opportunity. Predictably, the question of how free speech can hurt or help cultural rights provoked a wide range of views.

There was general agreement that freedom of expression should be exercised responsibly, respecting local cultural sensitivities and local traditions, particularly on religious issues. However, delegates diverged on who should regulate such responsibility, and how. Some believed that governments should have the power to intervene, given how sensitive and potentially explosive religious provocations can be. Others loathed the idea of government intervention. They noted that societies should tolerate shocking ideas if they are to progress: innovative ideas will circulate only if their originators are allowed to take the risk of making mistakes, and even offending others. Furthermore, in many situations, people can be trusted to regulate and protect themselves without the need for legal force. Bad ideas can be challenged with better ideas.

### **Hate speech**

Nevertheless, there are certain situations that demand state intervention. Extreme or abusive expression that advocates hatred or violence against others – commonly termed hate speech – is denied protection under freedom of expression standards. Hate speech describes a problematic category of speech that involves the advocacy of hatred and discrimination against groups on the basis of their race, ethnicity, religious beliefs, sexual orientation etc. Hate speech is condemned in all democratic societies, but there are differences in the way that they are dealt with.

How should society respond to hate speech? How far should it be suppressed by law and governmental regulation, and at what cost to the freedom of expression? Broadly speaking, the answer to that question ranges from the absolutist principles developed by the United States Supreme Court to a range of more nuanced positions to be found in Europe and Asia. The use of speech to incite violence is a criminal offence in all countries.

Under the ICCPR, not only is hate speech sanctioned under Article 19, states have a duty to prohibit such speech under Article 20 of the Covenant. Article 20 imposes separate commitments on states concerning the restriction of war propaganda and hate speech. Article 20 (2) ICCPR reads: "Any advocacy of national racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

An extreme example is the incitement of genocide. In the first such case since the Second World War, the UN Criminal Tribunal for Rwanda convicted two media executives of incitement during the 1994 genocide in Rwanda. They were both sentenced to life imprisonment. In the United States, the constitutional protection of freedom of speech permits restriction only if the speech whatever its motive, amounts to an incitement to imminent violence (the "clear and present danger" test). The international standards however legitimise restriction on abusive speech in addition to violent incitement, where there is the motive is to incite hatred or discrimination of others. In the case of racist speech, the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination reinforce that duty.

### **Religion**

There is a broad consensus in Europe and Asia on the need for restrictions on free speech to protecting individuals from being the targets of hatred on account of their beliefs. However, whether religions as such should be protected from blasphemous speech is more contentious. Some seminar participants argued that freedom of expression should not extend to insult, satire or offensive comments in respect of any religion. Others argued to the contrary, that while people should treat others' beliefs with respect, religions are powerful forces in society and the law should not exempt them from criticism.

On 30 March 2007 at the proposal of Pakistan, the new UN Human Rights Council adopted a draft Resolution on Combating Defamation of Religion (A/HRC/4/L.12). It was adopted on a vote of 24 'Yes'es, 14 'No's, and 9 abstentions. All European members of the Council voted against the draft resolution, whereas the Asian votes were divided between yes, no and those who abstained. In Asia, blasphemy laws are vigorously enforced in a number of countries often formally justified under the banner of public morality. In Europe, at the national level, the trend over many years has been either to

abolish historical laws that sought to protect religious doctrine or beliefs from attack or criticism, or to actually not enforce them. However, the European Court of Human Rights has not taken the position that blasphemy laws are incompatible with the guarantee of freedom of speech in Article 10 of the Convention.

In 2005, the publication of cartoons of the Prophet Muhammad by a Danish newspaper, *Jyllands-Posten*, led to world-wide protests by Muslims. The publication was investigated by the Danish public prosecutor for offences of blasphemy and incitement to religious hatred. In the light of the evidence, the decision taken was not to prosecute. In Britain, the Racial and Religious Hatred Act 2006 creates, for the first time, an offence of stirring up religious hatred. However, it also offers the following balancing clause to protect freedom of expression about religion: "Nothing in this [Act] shall be read or given effect in a way which prohibits or restricts discussion, criticism or expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents, or of any other belief system or the beliefs or practices of its adherents, or proselytising or urging adherents of a different religion or belief system to cease practising their religion or belief system".

The complexity of this issue should not be underestimated. As some participants noted, simply trusting the marketplace of ideas may be naive, as religious beliefs may not be amenable to the kind of open debate that is desirable on public policy issues. Even seemingly academic discussion of a religious community's characteristics may be designed to till the ground for a campaign of hatred. When the target is a marginalized minority, the marketplace of ideas may fail to generate more balanced discussion. On the other hand, sweeping laws against insulting religions are open to misuse by religious authorities.

Whether it is to protect religious minorities or public morality, the classic question arises: who should wield regulatory power? If limits are to be imposed on freedom of expression, the regulatory agency should be independent of the government and other powerful interests. They should be transparent, accountable, and democratic. The establishment of such bodies is an opportunity to embrace the diversity within a given society. They should comprise members genuinely representing the people, including ethnic, linguistic and religious minorities, as well as women. Some ASEM countries have self-regulation systems to ensure their accountability to diverse segments of the public, such as press councils and professional codes of ethics for journalists. ASEM should promote such voluntary systems as a preferable alternative to heavy handed government regulation.

One other proposal was for a credible and trusted "council of elders" that would give its opinion on books, films or other cultural works that authorities fear will provoke social disorder. In many such cases, cultural works are banned under pressure from less

tolerant quarters of society, including groups with political agendas disguised by the mantle of religious piety. A body such as a council of elders can offer more measured judgments on a work, which while not legally binding, could help moderate heated debates through moral suasion.

### **Protection of unpopular speech**

Courageous citizens claiming their right to free speech have been at the forefront of democratic progress around the world. However, the power of modern communication technologies to mobilise and magnify public opinion can sometimes produce undemocratic consequences. One worrying trend is for mobilised constituencies – seized by particular grievances, or energised by religious or nationalistic frenzy – to use their strength in numbers to subvert democratic institutions and trample on minority rights. In several countries, this type of mob power constitutes one of the most serious threats to freedom of expression. Writers, artists, public intellectuals and activists face harassment and even physical harm from groups who oppose their ideas. Even a relatively stable and prosperous country such as Malaysia has seen peaceful and legal meetings for inter-faith dialogue broken up by mobs.

Freedom is commonly associated with a responsibility, in negative terms, for government to not intervene. However, the state has a vital positive role in preserving the rule of law. While the call of "people power" is seductive, the government has a duty to protect individual citizens whose freedom of expression and other rights are threatened by public sentiment, no matter how widely held. Freedom of expression needs the rule of law which cannot be secured by a passive or weak state. In the case of media freedom, it is a paradox that while the struggle for centuries has been over ending state interference, in the 21<sup>st</sup> century the call is for a new positive role for the state. It is the state which is called upon to ensure media pluralism and to ensure, for example, that minorities have access to broadcasting time as well as resources.

### **Promoting media diversity**

Accordingly, some delegates took pains to remind the seminar that the question of cultural rights should not be focused on restricting freedom of expression, but should also consider the positive promotion of cultural diversity through the media. UNESCO has played a leading role in promoting media diversity, along with various non-government organisations. At the national level, state radio stations, for example, have the opportunity to broadcast radio programmes in minority languages. Governments can also make funds available for minorities to create their own independent alternative media. Such public sector responses are often neglected by countries operating under the current global paradigm favouring free market solutions. Although state intervention is rightly viewed with suspicion in many quarters, global best practices show that institutions and regulations can be structured in such a way that the public interest is served without necessarily opening the door to political interference by the

government of the day. Among the tools used to widen meaningful choice is the creation of a public broadcaster, must-carry requirements for all broadcasters, public access channels, reserved bandwidths for community radio, and cross-subsidies for alternative newspapers. Conversely, the refusal to institute appropriate enabling regulations and instead to allow unfettered market forces to shape the media environment should be construed as an active and powerful constraint, and not as the default or neutral position.

Participants encouraged all ASEM partners to ratify the International Covenant on Civil and Political Rights and its additional protocols, as well as the UNESCO Convention on the Protection and Promotion of Cultural Diversity. Concern over the cultural implications of this era of global economy and rapid developments in communication technology has led to an international initiative of some countries, through UNESCO, to protect cultural diversity and to resist the dominance of global media corporations and the consolidation of cultures. UNESCO notes that 50 percent of world languages are in danger of extinction and that 90 percent of them are not represented on the Internet. In addition, five countries monopolise the world's cultural industries. In the field of cinema, for instance, 88 countries have never had their own film productions.

In 2001, UNESCO's Universal Declaration on Cultural Diversity (UDCD) recognised cultural diversity as "a source of exchange, innovation and creativity", a common heritage of humanity that "should be recognised and affirmed for the benefit of present and future generations". A Convention on the Protection and Promotion of the Diversity of Cultural Expressions entered in to force in March 2007. A key objective of the Convention, in the context of global regulations on trade, is to recognise the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning. The Convention reaffirms: "the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory". Apart from the goal of encouraging greater diversity, the Convention commits states to promoting international co-operation between cultures through development and dialogue, including the creation of an international fund for cultural diversity. At the time of writing, the European Community and a number of EU member states have ratified the Convention, as have China, India, Vietnam, Mongolia, Laos, Bangladesh and Tajikistan from Asia.

### **Working Group 3: Roles and Relations of State – Civil Society, International Organisations**

The focus in this workshop was on the conditions, actors and institutions that influence and even determine the enjoyment of freedom of expression and press freedom in any

country. Traditionally, international affairs have been the preserve of states and of their relationships with one another. But today non-state actors are also prominent, such as international corporations and global media companies. In addition, there are significant civil society bodies which operate locally, nationally as well as internationally. In the promotion and protection of human rights, including freedom of expression, all such actors have significant roles to play and should cooperate to foster these freedoms.

However, freedom of expression needs to be fostered on the ground and this requires a range of policies and institutions designed to implement international and national standards on the protection of freedom of expression and freedom of media. If, as the Group pointed out, there was agreement on the importance of lively and free media, as well as the fullest freedom of expression, in democratic and prosperous societies, the major challenge was that of how to ensure implementation of these values in practice. It is important to offer institutional protection to newspapers and all media, as well as to journalists whose independence is a vital component of freedom of the press and information. Equally, the freedom of civil society and of human rights defenders needs both recognition and effective protection.

### **States**

It is the state which has the primary obligation to ratified international agreements on human rights. In this and in the other workshops, it was agreed that the foundation of protecting freedom of expression at national level was commitment by all ASEM partners to the international human rights protection system as developed through the United Nations and at regional level. The ICCPR, which includes the guarantee of freedom of expression (Article 19), was of particular importance. All European ASEM members had ratified this Covenant, but not all Asian members.

International law and norms provide a foundation for developing common understandings on freedom of expression. The process of reporting to the Human Rights Committee, the body which supervises the fulfilling of states' commitments under the ICCPR, helps to strengthen national law and practice as well as enables the sharing of national experience of protection between states. The Working Group also recommended that all ASEM partners accede to the Optional Protocol to the Covenant. This allows the individual, having exhausted any remedy within the country, to complain about violation of their rights to the Human Rights Committee.

### **International institutions**

At United Nations level, an important focal point is the role of the Special Rapporteur of the Human Rights Council, currently Ambeyi Ligabo from Kenya, on the promotion and protection of the right to freedom of opinion and expression. One proposal was that all ASEM partners should offer an open invitation to this rapporteur to visit their

countries. UNESCO also embraces the mission of empowering people through the free flow of ideas by word and image, and by access to information and knowledge. It works to promote freedom of expression and freedom of the press as a basic human right. The regional presence in Asia of the UN Office of the High Commissioner for Human Rights (OHCHR) was a positive development that can promote freedom of expression, especially through its human rights education programme.

In the European context, all European ASEM partners are members of the Council of Europe and party to the European Convention on Human Rights. The jurisprudence of the European Court of Human Rights has been highly influential in establishing common standards on freedom of expression and its limitations within all member states. The Council of Europe's Media and Information Society Division has shaped law and policies throughout Europe through its studies, resolutions and guidance on many dimensions of freedom of expression. The Organisation for Security and Co-operation in Europe (OSCE), which has a wider membership and includes ASEM's European members, has worked likewise to foster freedom of expression and media freedom. It appointed a Representative on Freedom of Media in 1997.

Participants welcomed current moves by ASEAN towards setting up a regional human rights mechanism, as this had the potential to promote freedom of expression within the ten-member Southeast Asian grouping. However, participants expressed concern that ASEAN's commitment to set up such a body has been somewhat vaguely worded thus far, and much work needs to be done in the short term to ensure that the proposed mechanism makes a meaningful contribution.

### **National level institutions**

#### **1. Parliaments**

Parliaments should be at the forefront of the promotion and protection of human rights and are encouraged to be so by the International Parliamentary Union, the global body that brings them together. Legislation is the business of parliaments, as is the scrutiny of government policies. All countries have adopted often necessarily complex legislative regulation of the communications industry, especially of the audio-visual media and the new communications technologies. Parliament can ensure that such regulatory frameworks are driven not only by legitimate market and competition goals, but also incorporate freedom of expression values.

#### **2. Courts**

Participants stressed the need for national level constitutional norms and legislative regulation, particularly to ensure that limitations on press freedom and freedom of expression are precise and not vague. This lessens their

vulnerability to be arbitrarily invoked. A key guarantee of the rule of law is that courts should have oversight jurisdiction on limitations that are invoked. While parliaments and governments decide upon legal frameworks, it ought to primarily be the courts, operating independently under the rule of law, to finally resolve disputes in concrete cases. There is now a considerable body of jurisprudence on freedom of expression, which can be accessed by courts in deciding cases. The European Court of Human rights has developed an extensive jurisprudence on all dimensions of freedom of expression. The Court's judgments are not only of value to European countries, but are of universal significance. It would be of value to have national courts in Asia to consider and draw from the jurisprudence of the European Court of Human Rights. In the Asian region, there is no similar regional human rights mechanism as yet, but national courts have considerable experience in addressing controversies over freedom of expression. There was agreement that it would be useful to have the body of case law from different Asian countries available and accessible to the different superior courts, as the same issues (e.g. balancing press freedom against other interests) often arise in all countries. The construction of a comprehensive electronic database of freedom of expression and information cases of the ASEM countries could be a worthwhile follow up to the Seminar. An interregional judicial seminar under the aegis of ASEM or ASEF on the protection of freedom of expression could be another constructive idea.

### 3. National Human rights institutions

Further institutional support for freedom of expression and human rights generally is to be found in the development of national human rights institutions (NHRIs). Human Rights Commissions to be found in many ASEM countries can play an important role in ensuring that legal safeguards for freedom of expression and of the press are enforced in practice, through their monitoring function and by offering victims an accessible avenue of complaint. All ASEM partners should consider the creation of NHRIs, where they do not exist, in line with the Paris Principles on these bodies.

### 4. Regulatory bodies

Concern over the adequacy of legislation on media ownership and media industry concentration in both developing as well as developed countries is widely shared in ASEM countries. Participants underlined that ASEM partners have a duty to promote media diversity and should monitor excessive media concentration by enforcing competition rules. The concern is that without plurality of media ownership, the media may not play its democratic roles to reflect the plurality of opinions, or neglect its watchdog function. Transparency on media ownership should be insisted upon in national law. In addition, participants felt that the law should equally insist on the editorial independence

of privately owned media as much as publicly owned media. Public broadcasting systems and community media can play a role in countering the dominance of commercial media. But the innovative role of private media companies, national and international, in the communications revolution (through technological developments and the explosion of media options) were also acknowledged.

Regulation of audio-visual media should be based on freedom of expression principles. There is no single model of a media regulatory system, but such bodies should be independent of political and economic interests, and should be transparent and accountable to the elected parliament. Civil society organisations should be eligible for membership of radio and television authorities.

5. Media accountability systems

Press Councils and other voluntary media accountability systems, such as Ombudsmen and professional codes of ethics for journalists, are based on the ideal of self regulation. A growing number of countries in Asia and Europe have press councils. When they function well, they can empower the public by increasing the media's accountability and accessibility. Such systems enhance media freedom by reducing society's need to resort to legal and regulatory controls. To serve this function, press councils need to be independent of both government interference and media owners, and should be represented by consumers as well as media professionals. They need to be empowered to monitor and enforce compliance with media-specific codes of conduct so as to impose positive duties on journalists to uphold accuracy and fairness standards in their reporting.

6. Civil Society: national and transnational non-governmental organisations (NGOs)

Participants recognised that in most countries civil society organisations are at the frontline of the struggle for freedom of expression. Other national-level organisations that promote freedom of expression include trade unions representing journalists. These are supported by transnational NGOs active in the promotion of freedom of expression globally. It was agreed that such bodies are both a measure of freedom of expression in society and a vital component for sustaining that freedom. The law should ensure that the freedom of human rights defenders, including media focused groups, to operate is fully guaranteed. Governments should consult NGOs on media law reform and they should participate in regulatory bodies as well.

## Working Group 4: Freedom of Expression and ICTs

Technological change is perhaps the single most consequential development shaping the

environment for freedom of expression. Information and Communication Technologies (ICTs) provide powerful tools to seek, receive and impart information and ideas, and represent an unprecedented opportunity to enhance freedom of expression for all. From all corners of Asia and Europe, discussions underscored that the ICTs are not only a tool for individual empowerment, but also for building communities and the achievement of human security and development goals.

The Internet and other digital technologies have lowered the economic and regulatory barriers to entry for individuals and groups that have until now been shut out of the communication marketplace. Repressed indigenous communities and separatist movements are using the Internet to disseminate their culture and offer information about their struggles. Even in societies with benign relations with their minority cultures, smaller groups may have been unable to afford the cost of running their own newspapers or broadcast services.

Similarly, smaller political parties and civil society organisations, even in free societies, have struggled to access commercially-run media. Again, new digital technologies have come to the fore, enabling a proliferation of niche media that reflects the internal diversity of their societies. With the arrival of so-called "Web 2.0" technologies and "user-generated content", participation in the media is reaching hitherto unimagined extents, with even children posting text and video for the world to see.

### **Digital divide**

While the growth of internet use has been phenomenal in all ASEM countries, it was acknowledged that the digital divide still exists within and between countries, denying the benefits of the new media to millions of the poor, elderly people and those who do not use the dominant languages of the world. Thus, the Internet is not automatically a great equaliser. However, the Internet is already showing the practical fruits of freer communication in even poor communities – especially when deployed creatively in conjunction with other channels such as mobile phones, photocopiers, and human intermediaries. For example: farming communities in China are benefiting from timely market news, while midwives in remote villages in Aceh, Indonesia, are able to consult city doctors on complicated cases.

Given the pervasive quality of ICTs as the pre-eminent vehicle for achieving all kinds of communication objectives, securing freedom of expression as a basic human right is becoming meaningless without access to ICTs. Seminar participants believed that investing in ICT, like investing in education, should be considered part of the core business of governments. This is a task too important to be left to the free market. While private investment sources are often available, the priorities of private corporations are often not aligned with public needs. In this regard, international funding mechanisms can play a vital role. In providing assistance, funders should align themselves with

genuine needs of local communities, among them the need for non-English software and content.

### **Public debate and freedom of information**

Freedom of expression enables citizens to govern their own lives. When they have access to official information, they can participate more fully in decisions that affect them. ICTs provide the opportunity to create a society in which government information flows freely. While all governments have built an online presence, delegates said that e-government should go beyond the use of the internet for disseminating government messages or facilitating the delivery of government services. ICTs significantly improve the feasibility for implementing national freedom of information policies, including the right of citizens to access and correct information related to them. Citizens should automatically have timely access to official information, as this helps them participate meaningfully in decisions that affect their lives.

Delegates noted that internet content is dominated by entertainment and consumerist values. This, together with the proliferation of niche media catering to narrow interests, can undermine the public sphere – the space where citizens engage in social conciliation and democratic deliberation about matters of common concern. Thus, ICT availability by itself cannot increase citizen engagement with public affairs. This underlines the need for special efforts to promote public service media and community media with the specific mandate to address the challenge of enhancing democratic participation.

### **Risks associated with ICTs**

There is popular and official concern in all countries about the abuse of ICTs, such as child pornography, incitement to hatred, violence and terrorism, and fraud. The working group was divided as to whether these amount to qualitatively new risks, or simply old risks in new manifestations. Certainly, ICTs can enable these evils to be perpetrated in new ways and to new degrees. In any case, delegates concluded that existing international law provide adequate frameworks and norms to deal with these problems. National legislation should be in harmony with international law, and strictly enforced. Delegates roundly rejected any form of prior censorship of online content by the state or internet companies. They noted with concern the tendency of governments to restrict freedom of online expression for officials' own protection, in the guise of protecting society.

The working group noted that a disproportionate response by governments would be a cure worse than the disease: it would deny societies from tasting the opportunities and benefits of ICTs, which outweigh the risks. Even looked at from governments' own interests, disproportionate responses usually backfire by magnifying the impact of the alleged original offence. Where there are legitimate social interests to protect, the

delegates noted that there are many possible responses other than to use government power. Voluntary codes of ethics and other accountability systems should be promoted. Censorship is unlikely to be sustainable and will probably create its own problems.

Children's growing access to communication tools poses special ethical and regulatory challenges. The technical ability to use technologies such as blogs and camera phones has raced ahead of users' capacity to use them wisely or even safely. Indeed, this is not a problem limited to the young. Adults armed with unprecedented means to record and transmit text and images are straining social norms of taste and decency, as well as violating the privacy of others. The promotion of media literacy has become an urgent priority.

### **Borderless communication**

Media are crossing national boundaries with ever greater ease, thanks not only to technologies such as the Internet and satellite television, but also to firms in the increasingly efficient business of global distribution of content, from films to books. Non-media organisations such as civil society groups have also benefited from the increasing ease of trans-border communication. For example, the Internet has given NGOs – including those promoting freedom of expression – a valuable tool for lobbying globally.

Such trends are a mixed blessing. For billions of people, trans-border communication translates into a higher quality of life, as they are exposed to more ways to educate, inform, entertain and culturally enrich themselves. However, an unregulated flow of media across borders makes it harder for communities to serve their legitimate local interests. Any society trying to balance freedom of expression with other rights would want to apply local community standards and address local needs. Even liberal democracies have faced this conundrum, as when France sought to ban a Yahoo! marketplace selling Nazi memorabilia.

Borderless communication can pose ethical and legal problems for communicators as well, for it often takes their messages far beyond intended audiences, and with unpredictable effects. This technological trend is exacerbated by population movements, resulting in diaspora networks through which ideas and information flow. The working group noted the risks that instantaneous trans-border communication pose for peaceful relations between societies. Participants said that some confrontation between value systems may be inevitable.

The Prophet Mohammed cartoon controversy in 2005–06 was discussed as a case in point: what could have stayed a peaceful domestic debate about self-censorship in a liberal democracy became an international lightning rod, with violent consequences. The case highlights another dilemma: while artists, writers and other content creators

are encouraged to consider the feelings of others, how low should the threshold be? It would be unreasonable to expect people to adjust to the lowest common denominator, such that they choose silence (or are silenced) as long as there is a risk of offending anyone anywhere. A middle way has to be found between offensive speech and bowing to intolerance.

### **Architecture for freedom**

Technology experts at the seminar highlighted several technical challenges that require public debate and enlightened policy-making. They warned that bureaucratic, commercial and technical decisions were being made in Asia and Europe that would have the effect of restricting freedom of expression. For example, there is a danger that the Internet will lose its character as a neutral platform, as companies operating the channels come to control content as well. Regulators need to preserve the Internet's openness. Delegates also expressed concern at the development of officially regulated national gateways. They argued that private operators should have the freedom to connect directly to the global internet. This is not only to reduce the scope for censorship, but also to avoid the fragmentation of the global internet, which would diminish its network effects and thus its value as a public good.

ICT procurement decisions can have long term effects on freedom of expression. Deploying expensive proprietary technologies, for example, can stifle innovation and lock out large groups of users. In rolling out ICT infrastructure, governments should choose formats based on open standards that are cheap and easy to implement. ASEM could promote technology transfers that promote these principles.

With mobile devices becoming a key means of internet access, there is a need to apply standards that protect freedom of expression. Mobile technologies create opportunities for more individuals to tap the benefits of the internet, but also open up the risk of unjustified surveillance and privacy invasion.

## Concluding Observations

Many different dimensions of the right to freedom of expression were raised in the Siem Reap Seminar. The subject brings together many questions about values, about the role of national and international law and regulation and about media, technology and culture. It also raises the classic questions associated with all internationally recognised freedoms: the relationships between the individual, the community and the state; and the balance between human rights and responsibilities. Most if not all of these themes were discussed in a constructive spirit in the Working Groups or plenary sessions, which helped to sharpen the different recommendations for action emerging from the Seminar.

ASEM partners make up a community of extraordinary diversity. Within each country – let alone between countries regions – there is a plurality of interests, experiences and values. The very commitment to international dialogue presupposes differences in perspective that need to be better understood. The rapporteurs were duly attentive to divergences of opinion, which have been summarised in this report. However, the rapporteurs were in the end struck by the almost total absence of dissensus on first principles: freedom of expression appeared to be unanimously recognised as a right and a good that every country has an obligation to protect and further.

# KEYNOTE SPEECHES

- **Samdech Hun Sen**  
*Prime Minister,  
Kingdom of Cambodia*
- **Shashi Tharoor**  
*Former Under-Secretary-General for Communications  
and Public Information,  
United Nations*
- **Robert Ménard**  
*Secretary General,  
Reporters without Borders*

**Samdech Hun Sen**  
Prime Minister, Kingdom of Cambodia

Today Siem Reap, our ancient and civilised capital, holds the 8th Informal Meeting of the 43 Asian and European countries of ASEM on human rights, on the topic of freedom of expression.

Indeed, freedom of expression has long been regarded by every human being, including the people of Cambodia, as a vital element for everyday life, for interaction and for the exchange of ideas to bring harmony and happiness, prosperity and mutual benefit.

Clearly, a family or society entitled to equality, justice and advancement needs freedom and expression in everyday living. Without doubt, people will not be able to tolerate any interference, threat, and intimidation through illegal deeds. In this sense, freedom of expression, likewise human rights and dignity, is a right inherent from birth, and nobody can take it away from the foundation of justice, peace, and personal and social development.

Human rights and dignity have accompanied mankind since the early stages, but if we look back at human history, human rights and dignity could not be strongly developed on their own.

Indeed, the history of humankind is the progressive history of the development and enhancement of human rights and dignity. In this sense, the concept of human rights has been developed by many philosophers and intellectuals of different racial and cultural backgrounds. Precisely, many heads of states and lawmakers have also provided contributions to the endless development of ideas and perception of the respect of human rights and dignity. Of course, with global efforts, international standards of human rights and dignity were established in the 19<sup>th</sup> century. However, not until the mid 20<sup>th</sup> century were human rights institutions established in large scale under the tremendous endeavors of the United Nations, which adopted the Universal Declaration of Human Rights in 1948.

This Declaration constituted a guiding law and framework to protect human rights and dignity from the threat of life and reputation. In this context, we should also underline

that human rights and dignity are one of the important criteria for the evaluation of democracy in each society. Indeed, the official guarantee defined in the constitution on human respect is the highest value of democracy, which nobody can deny. In this sense, the Cambodian Constitution has incorporated the spirit of the Universal Declaration of Human Rights and has completely abolished capital punishment as well.

In implementing the international conventions of human rights, the Royal Government of Cambodia has been paying attention to all aspects of human rights by carrying out many practical actions to promote political, economic and social freedom of the Cambodian people. In this context, the rectangular policy of the Royal Government of Cambodia in its third legislative term has reflected a broad philosophy to promote the rights and dignity of the Cambodian people by providing political, economic and social freedom.

In this framework, freedom and the respect of human rights remain a vital foundation of the economic and social development of Cambodia. UNTAC Criminal Law has inserted the defamation issue as an offence that could lead to imprisonment. The form of implementation of this UNTAC law was not good in Cambodia because the freedom of opposed expression could lead to arrest and/or imprisonment. Therefore, in its initiatives to take responsibilities, in decriminalisation of freedom of expression and having only a fine or civil liability, the Royal Government of Cambodia has proposed to eliminate completely the penalty concerning defamation from the criminal law and has initiated to revise the new penalty code that the French Government is assisting in writing in which defamation will not be penalised. Meanwhile, the Royal Government of Cambodia is supporting and pushing for the establishment of an ASEAN human rights institution for the benefit of the ASEAN people. I would like to take this opportunity to appeal to countries whose representatives are present, to remove the penalty concerning defamation from their laws. I would also like to appeal to all ASEAN countries to ratify ASEAN Charter promptly.

The Royal Government of Cambodia has clearly known and highly valued the freedom and respect of human rights and dignity of people because Cambodia itself severely experienced inhumanity and the complete repression of freedom during the 3 years, 8 months, and 20 days of the Democratic Kampuchea regime. Cambodia in those zero years was empty-handed, but the pain and the enthusiasm to have survived are the endless dynamics of the protection and building of new life and rights and dignity of people. We have experienced war, the genocidal regime and the regime of human rights and hence we are making the effort to steer our children and grandchildren away from war and the genocidal regime, towards development, humanity and upholding their value as human beings for more generations to come.

As far as the rights and dignity of people are concerned, I would also like to highlight that today Cambodia has more than 2,000 non-governmental organisations, more

than 500 press agencies, of which neither national nor international ones are under our control. We have 15 different Press Associations. These institutions are operating independently in Cambodia, and in particular a range of meetings on human rights are all undeniable evidence that reflects the well-defined will of the Royal Government of Cambodia to promote democracy and the respect of human rights and dignity in practical implementation.

The Royal Government of Cambodia welcomes all kinds of points of view, except those that incite war, violence, discrimination of races, colors and religions and so forth that are prohibited by law and human rights.

With political rights delegated to citizens, the Royal Government of Cambodia is paying special attention to strengthen security, stability, social order, freedom of expression, and rights for citizens to participate in every aspect of democracy. Regular and peaceful elections with confidentiality of the ballot, the promotion of rights in free political movements through many political parties, freedom of expression and rights to access information through the press and countless national and international mass media, these show the solid and top freedom of expression of every Cambodian.

In short, Cambodia has a wide range of instruments for expression, ranging from publication, audiovisual broadcast, demonstrations, strikes and general elections. As a matter of fact, these instruments always give those who want to advocate their views an opportunity to do so any time. Although demonstrations are not favorable in some occasions, people still have access to other instruments to conveniently let their voices be heard.

Looking at the work of the government, from the middle to the grassroots level and among institutions, apart from the effort to carry out administrative, judicial and good governance reforms so that the government work is closer to the people, we are still trying restlessly and without delay to promote and protect the rights and dignity of people in general. The core work of various departments and ministries has indirectly contributed to the work of human rights. The Human Rights Committee of the Senate, the Human Rights Committee of the National Assembly, and the Human Rights Committee of the Government have made achievements in protecting and developing human rights with high responsibilities. Besides, the Cambodian Human Rights Committee, one of the government institutions, has also made many fundamental achievements.

Only this year, the Cambodian Human Rights Committee provided remedies to 239 complaints out of 300 complaints received from 12,102 people. Moreover, overdue pre-trial detention periods have been completely eliminated after the Cambodian Human Rights Committee actively collaborated with provincial and municipal courts to address the issue. In 2002, 204 criminals were detained overdue. The tally dropped to 102 in

2004 and 45 in 2006. In 2007, if any criminals are detained beyond the legal period, the Cambodian Human Rights Committee will promptly cooperate with that judicial institution to look into the matter and resolve it.

Furthermore, there were 22 cases of violence by criminal groups in 2006, and six cases in 2006. Another effort of the Cambodian Human Rights Committee in collaboration with the National Police and the Military Police is to raise awareness of protecting the suspects and to send them to trial and thus cut down the incidence.

The Cambodian Human Rights Committee is working with NGOs in a process to set up a national institution responsible for human rights in Cambodia. I strongly believe that the National Committee for Human Rights will come into existence soon because of good joint efforts.

Before the commencement of the seminar on the topics of political and cultural rights, the roles and relations between the state and civil society and international organisations, and the impact of information technology, and freedom of expression, I would like to draw your attention to the fact that human rights and freedom of expression can take place regardless of wealth, political regime, race or religion. In this context, we possess rights and dignities, and so we have to respect, protect, and improve them conforming to the people's needs. In addition, I would also like to draw your attention to the fact that freedom of expression cannot be implemented in a country of war, martial leadership or genocidal regime, which was Cambodia's experience from 1970-1975 and 1975-1979. We could not express ourselves when the hand grenade or bullet was being fired at us. We did not have any rights in Pol Pot's regime, not even the right to survival. Therefore, peace and political stability are the development foundations of democracy and all kinds of rights, including freedom of expression.

I now declare the opening of the 8th Informal ASEM Seminar on Human Rights on the topic of freedom of expression in Siem Reap.

Thank you!

**Shashi Tharoor**

Former Under-Secretary-General for Communications and Public Information  
United Nations

Thank you for giving me the opportunity to address you this evening. Indeed, when the tireless Sol Iglesias of the Asia-Europe Foundation (ASEF) called me, she asked, "You believe in free speech right?" "Yes," I said, and so she replied: "Good. We'd like you to give one." So here I am to make a free speech about free speech.

I must say it is a rare pleasure to be addressing an audience of so many government officials on a subject that has not always been the favourite of government officials. On one occasion I found myself asking a senior Asian bureaucrat why so few of his tribe had shown up at a United Nations (UN) conference on press freedom. "What was the problem," I asked, "Was it ignorance or was it apathy?" His reply was curt: "I don't know and I don't care." Which seems to sum up the problem.

But I know you are all here today because you do want to know, and I suspect that Robert Menard and I will attempt to ensure that you do care.

It is instructive that an intergovernmental organisation, the United Nations, established the World Press Freedom Day – 3 May every year. The Day marks the anniversary of the Declaration of Windhoek, a statement of principles drawn up by African journalists calling for a free, independent and pluralistic media on their continent and throughout the world. The Declaration, adopted in 1991 at a seminar organised by the UN and UNESCO in Windhoek, Namibia, affirms that a free press is essential to the existence of democracy and a fundamental human goal. The World Press Freedom Day was established to remind people everywhere that a free press is not only an essential human right, set out in 1948 in Article 19 of the Universal Declaration of Human Rights. It is also a foundation of democratic and tolerant societies.

It is a day when we draw attention to the right of the press to do its job, *and* our obligation to support and protect that right and, in doing so, our own interests. But this is a message that should not be confined to a single day. Freedom of the press matters to each of us every day of our lives.

We need only think, after all, of the many journalists who have lost their lives in pursuit of the truth.

Journalists have been resolute in the face of hostility and danger. But the continuing threat to their personal and professional integrity must concern everyone, because we all rely on the media as an agent of free expression; as a defender of human rights; as an instrument of development; and as a means of rousing the world's conscience.

When press censorship is imposed, when journalists cannot travel or report freely, when their lives are threatened or, even worse, harmed, then everyone suffers.

According to the Committee to Protect Journalists (CPJ), 56 journalists were killed in 2006, and 30 have lost their lives so far this year. Thanks to the CPJ, we know that most journalists who die in the line of duty around the world are murdered – deliberately targeted, as individuals, for exposing corruption or abuses of power; for opposing entrenched interests, legal or illegal. In short, for doing their jobs.

In Iraq alone, since the outbreak of hostilities in March 2003, 112 journalists have been killed, of whom 90 were Iraqis. If you add in the figures for media support staff – fixers, translators, drivers and the like – then the death toll rises to 152. Furthermore, some 49 journalists have been kidnapped or abducted.

That the CPJ's accounting of the deaths of colleagues has become a global indicator of press freedom is, in itself, a sorry story. This escalating violence affects all of us who depend on an open and free press as a cornerstone of freedom of speech and expression. It endangers vital reporting on corruption, organised crime, human rights violations, and environmental abuses.

And, as I have done many times in the past as a UN official, such figures only prompt me to remind all governments of their obligations to honour their commitment to allow people to "seek, receive and impart information and ideas through any media and regardless of frontiers." I would point out that one of the best ways to do so is to ensure that journalists receive the protection they both need and deserve.

Of course I realise that sometimes we need to be reminded of why journalists' work is so important. Journalists work on the front-lines of history; unravelling the tangle of events, giving them shape and giving people a narrative sense of their lives. And, although some may argue that they are simply messengers, I would dispute that.

Journalists and newspaper editors, along with their radio, television and web colleagues, possess enormous power. I have, on a number of occasions, sat in the United Nations Security Council and listened while representatives of 15 nations, including the most

powerful states on earth, meet to agree – and sometimes fail to agree – on action to maintain or restore international peace and security. Some of these states possess nuclear weapons. But it is not they who are the custodians of the most formidable tools the world has ever known. It is the media.

The media shapes our awareness of events and, by so doing, sometimes shapes events themselves. Events that the media ignores find it difficult to obtain traction in the modern world; events that the media focuses on, on the other hand, become impossible even for powerful governments to ignore.

We know here in Asia that in the fight against terrorism, some countries have enacted or are considering measures that restrict press freedom. The fight against terrorism, however, cannot be won unless the media are allowed to play their crucial role of informing citizens and acting as a watchdog.

I understand that some Asians feel strongly that in our cultures, freedom comes with responsibilities, and that untrammelled freedom of the press carries risks of social and political disruption that cannot be allowed. The example of the Danish cartoons of the Prophet Mohammed is often cited. Few Asian governments would be happy to permit the publication of material so derogatory as to offend and provoke a large segment of the population. We all know the famous American dictum that freedom of speech does not include the freedom to falsely shout "fire" in a crowded theatre. Similarly, your freedom to move your fist stops just short of my face. Such restraints are obvious, and no reasonable advocate of freedom of the press would seek absolute freedom for the media, unconstrained by the well-being of the society in which it flourishes.

But there is a world of difference between accepting this principle and implementing it reasonably. I have to say that societies are self-correcting mechanisms; when the press goes too far, it rapidly discovers the limits for itself. The press everywhere adopts restraints appropriate for its social environment. No American newspaper, for instance, would print the so-called "n" word when referring to black Americans – not because the Government disallows it, but because the editors are conscious of what is the decent and socially acceptable thing to do. Asian editors are capable of the same judgements, as they have demonstrated during the episode of the Danish cartoons. Leaving governments to decide what is reasonable and responsible substitutes the judgement of the authorities for the judgement of the media, and so risks that press freedom itself may be jeopardised.

We have seen a couple of troubling developments in recent days that have thrown some of these questions into sharp focus. The arrest of a cartoonist in Bangladesh last week and the suspension of publication of the leading Bengali weekly *Pratham Alo* – over a cartoon that sought to satirise not the Prophet, but the social custom of naming

everybody after the Prophet – are disturbing examples. If restraints are expected, fine; but if that means giving free license to the most intolerant elements of a society to censor ideas that are not themselves blasphemous, then we are all in trouble. As an Asian myself, I understand and respect the view that Asian societies are not European ones, and that not every standard applicable in Europe can be transplanted wholesale in Asia. But most Asians are capable of understanding a joke in the spirit in which it was intended. Let us not empower the humourless, because their agenda has little to do with society as it exists but everything to do with the society that they wish to create – one in which people of their political persuasion will prevail.

Few would argue today against the statement that information and freedom go together. The information revolution of today is inconceivable without political democracy – and vice versa. Already, the spread of information has had a direct impact on the degree of accountability and transparency of governments around the world.

At the same time, I should admit that governments are not the only danger to press freedom. In many countries, media concentration and media ownership by large conglomerates present another subtle challenge to a vigorous, independent press and endanger its role as a 'check and balance' to political and economic power. Democratising access to information can serve as a check, not only on governments, but also on press barons and media magnates. That is why the vital issue of democratising information is a major part of my theme today.

When information is controlled and manipulated, you can have tyranny, and worse, – we all, I am sure, remember the "hate media" that incited war and genocide in the Balkans and in Rwanda just a decade ago. When information is freely available, our new global information society has a better chance of being people-centred, inclusive and progressive. After all, the human mind is like a parachute; it functions best when it is open.

Freedom of the press goes hand-in-hand with freedom of information. It is gratifying that more than 50 countries have passed freedom-of-information laws, thus guaranteeing their citizens the right to know what their government is up to. According to the independent media watchdog *Freedominfo.org*, more than half of these freedom-of-information laws were passed in the last decade.

These new access-to-information laws have spawned a host of investigative articles on issues such as radiation contamination in Australia, lavish spending by some Canadian officials, corruption in India by elected officials and civil servants, and mercury poisoning in Japan. Freedom-of-information laws help the press in their work, and they help the public by promoting the accountability of government authorities.

Press freedom is also a precondition for economic and social progress, which is another primary objective of all Asian governments. Many of you are familiar with Amartya Sen's famous argument that there has never been a famine in a democracy with a free press. Famines are the result of a lack of access to food, and Sen has proved, with extensive research, that they occur only when the media is not free to draw attention to the problem. Press freedom is also essential to generating awareness about development; about the environment; about education; and about critical health issues like HIV/AIDS. And it continues to be a major building block in the UN's post-conflict reconstruction efforts. All these good causes require the media to do its daily work, and to do it well, but the media can only be effective if it has free and extensive access to information.

There is widespread recognition that restraints on the flow of information directly undermine development. Global interdependence means that those who receive and disseminate information have an edge over those who curtail it. The consequences are apparent in all fields of human endeavour.

The new hallmarks of development are the ability to receive, download and send information through electronic networks, and the capacity to share information – including not only newspapers and journals, but also web sites – without restrictions. This is why censorship is so unwise; it works against development. Developing countries need to open up to the outside world, liberalise the mass media, and resist government control and censorship of information, if they are to be able to take advantage of the opportunities that the information revolution has made available to the world.

Speaking of press freedom in 2007, nearly 60 years after the landmark Universal Declaration of Human Rights, we must recognise that though the promises it contains remain in effect, they must now be fulfilled in a very different world – a world that is being radically transformed by information technology.

It is axiomatic that in this modern world, the power to learn and the right to know – and therefore freedom of information – are inextricably linked to information technology. Just think of the microphone that I am using now for you to hear me, or the telephone calls and e-mails that the organisers of this lecture used to invite me here, and to make the necessary arrangements. My presence here today, like yours, owes much to information technology.

The Swiss writer and playwright Max Frisch dismissed technology as "the art of arranging the world so that we need not experience it." Although I too am a writer, I do not share Mr Frisch's perspective. Today, on the contrary, technology is absolutely essential to real participation in our world. And, although mankind cannot live by technology alone, the Information Revolution has – to use the language of the computer age – "upgraded" the lives of millions of people.

There is no doubt in my mind that modern means to access information can make the world a better place for everyone, if only by providing a window that allows people everywhere to better understand their neighbours, to understand distant strangers, and even to understand themselves.

Any doubt I might have had about the reach and influence of global mass communications was dispelled when I happened to be in St. Petersburg, Russia, for a conference and was approached by a Tibetan Buddhist monk in his robes, thumping a cymbal and chanting his mantras, who paused in his chanting to say, "I've seen you on BBC!" New communications technology has shrunk the world, and in a real sense, made it one: one market, one neighbourhood, one society.

In this world of satellite television, of cell-phones and of the internet, universal access to information is not just a highly desirable aim, but is also increasingly achievable one.

When we speak today about freedom of the press and access to information, we do so standing on a platform of technology. It is clear that technology is the bridge between the right to information, and its realisation.

That technology is a bridge is nothing new. But we need not envisage it as an expensive multi-spanned high-tech bridge of the type that links two distant points - the type of bridge that, in the 20th century, came to symbolise modern engineering. Indeed, in keeping with the impetus of today's technological advances, we can think smaller than that, because the liberating power of technology is rather simpler than that. The liberation process can start, for people in remote villages in poor parts of the world, with an internet kiosk, or a satellite link to a one-room school.

Information is liberating in many ways. It is liberating in the traditional political sense of the term - a sense that would probably have been understood by the nationalist leaders of many Asian countries, who used freedom of information, and specifically press freedom, effectively against their colonial masters. Information and freedom go together. The information revolution is inconceivable without political democracy, and vice-versa.

It is also liberating economically. Information technologies are an extremely cost-effective form of capital. Modest but focused investments in basic education and access can achieve remarkable results. Estonia and Costa Rica are well-known examples on other continents of how information access strategies can help accelerate countries' growth and raise income levels. Asia can do just as well.

Indeed, some of the least-developed Asian countries - I am thinking, for example, of Bangladesh - have also shown how determined leadership and innovative approaches

can connect remote and rural areas to the Internet and mobile telephony, and thereby improve the economies of small villages and farmers who were previously condemned to subsistence, because they were tied to local knowledge and local markets. And no-one who comes, as I do, from India could doubt that radical transformation is possible when information infrastructures are taken seriously.

What does this have to do with press freedom? Simple: these are two sides of the same information coin. Those of us who believe in liberty, and who seek to build a better world, should argue for greater access to information for all. We need to find ways to ensure that the information freely available in the West is also freely available to the rest.

Because if the information revolution is to deliver more than proximity – if it is to deliver greater understanding for the greater good, and thereby contribute to a better world for all – we need to do two things. First, we need to find ways to provide access to information to *all* people. Second, we need to ensure that this information is truly global – diverse, pluralistic and tolerant.

The substance is every bit as important as the means. The mass media that now rings our globalised world still principally reflects the interests of its producers. Even in the 21<sup>st</sup> century, what passes for international culture is usually the culture of the economically developed world.

Ask yourselves this: who makes the cut to enter the global imagination in our brave new world? Yes, there is the occasional third world voice, but it speaks a first world language. As far back as the first Congo civil war of 1962, journalist Edward Behr saw a television newsman in a camp of violated Belgian nuns calling out: "Anyone here been raped and speak English?" In other words, it was not enough to have suffered: one must be able to express one's suffering in the language acceptable to the media.

It is still the unfortunate truth that those speaking for their cultures in our globalised media are often not the most authentic representatives of them.

Some believe that the bias inherent in the mass media will be overcome by the Internet, and there is no doubt that the internet can be a democratising tool. In some parts of the world, it has already become one, since large amounts of information are now accessible to almost anyone.

A person's means of access to information has long served as a way by which you could determine his or her wealth – perhaps merely by glancing at the watch on their wrist. The stark reality of the world today is that you can tell the rich from the poor by their Internet connections.

Today, the poverty line is linked to the high-speed digital line, the fibre optic cable – lines that exclude those who are literally not plugged in to the possibilities of our new world. There is a marked gap between the technological haves and have-nots – between those who know, and those who do not – both between countries, and within them. This gap has come to be called the digital divide.

To put it simply, thus far, the information revolution, unlike the French Revolution, is a revolution with a lot of *liberté*, some *fraternité*, and no *égalité*.

As I have mentioned earlier, the digital divide is not just about access to technology. It remains a fact that 69 percent of the world's web sites are in English. That this poses problems may seem blindingly obvious to anyone in the auditorium tonight for whom Chinese or French are first languages. Imagine how much less the new media has to offer if your first and only language is Manipuri, or Lao? The content of the Internet discussions, and the markets it describes, and even the entertainment it provides, still apply mainly to two continents – Europe and America.

So the "digital divide" is not only technological, it is also a content divide that penalises developing countries. This content divide means that even where people find ways to access new media, there is often a lack of locally meaningful material. We must all help promote the creation of domestic content, in line with the local culture and in the local language. Cultural diversity and pluralism are essential to an inclusive information society. The two concepts – diversity of content and press freedom – need to go together.

The world I would like to see develop is one in which there is what I call "communications pluralism". I would like everyone to be free to get themselves into the information age. Only this will bridge the content divide.

There are many examples of projects that contribute to this pluralism. One of the most successful recent initiatives of UNESCO is the creation of multipurpose community telecentres throughout the developing world, providing communication and information facilities – phone, fax, Internet, computers, audio-visual equipment – for a wide range of community uses.

New digital technology offers great possibilities for enhancing traditional media and combining them with new media. Moreover, traditional media, especially radio and television, remain the sole form of access to the information society for much of the world's population, including the very poor and the illiterate.

Perhaps this is the newest challenge for the governments of Asia – to work to bring access to information, and the empowerment it offers, to all the world's people. Only

then will equity and equality be truly brought to the information revolution. Only then will the world's poor and underprivileged have a real way out of the darkness that shrouds their voices, and their hopes.

Now all of the above begs a simple question. Why is this important?

I suspect that no one here would argue that access to media and to the information it imparts is a magic formula – it will not solve all our problems. But it is a very powerful force that can – and must – be harnessed if we are to deliver a tolerable standard of living to all people.

And in the 21<sup>st</sup> century, a new global society is undoubtedly evolving. It will happen no matter how we respond, but at present, we still have some power over how it evolves. Will globalisation be a divisive force – one that merely adds to the gap between the haves and the have-nots in this new global society? Or will it be a process that actually delivers on the promise made at the founding of the UN in 1945 – of "better standards of life in larger freedom"? The answers depend, to a very real extent, on how well we can deliver information to those most in need.

If we get it right, there will also be direct benefits for those of us who already enjoy a high degree of personal and economic liberty. Why? Because media is education, and education is critical to global security. People who are well informed are less likely to be led astray by the purveyors of hatred and intolerance.

This should not be regarded by the delegates present today as a radical message. After all, your governments were represented in the World Summit on the Information Society, which met in two phases, in Geneva in 2003 and in Tunis in 2005. Freedom of the press was a substantial focus of this first-ever Summit on the subject, whose Declaration of Principles stressed "the commitment to democracy and good governance as well as the existence, in accordance with the legal system of each country, of independent, pluralistic and free mass and other communication media". At these Summits, world leaders, including all Asian leaders, committed themselves to freedom of expression, and to guaranteeing the plurality of information.

The information society of the twenty-first century can thrive only if citizens are provided with full information, to allow democratic participation at all levels. The media need to be engaged as indispensable key participants of the information society, and governments must welcome the role of press freedom as vital to democracy and good governance.

Bridging the information divide is not going to be easy. The barriers are many, but it is clear that access to information and communication must be made more universal

and affordable; that the right to receive and impart information contained in Article 19 of the International Convention on Civil and Political Rights must be protected as a fundamental right; and that in every country, a transparent and predictable policy framework should be put in place.

I see that I have taken more time than I intended to. We are all like Egyptian mummies, strapped for time! So let me tie my threads together.

The prospective benefits of the information age are clear. In a nutshell, we now have a powerful tool to address the disadvantages of under-development, isolation, poverty and the lack of political accountability and political freedom.

However, these benefits will only be made manifest when the entrances and exits to the information superhighway are open to everyone; when they are mapped and signposted in such a way as to allow everyone to know where they need to go; and when the road itself is suitable for all manner of vehicles, from sports cars to trams, and from rickshaws to bicycles.

The Information Revolution has already occurred; we now live in the age of the information society. Our task now is to shape it. That is why freedom of the press is so essential to all of our societies. Ladies and gentlemen, the future of the information society is in your hands.

Thank you.

**Robert Ménard**  
Secretary General, Reporters without Borders

Firstly, let us avoid any misunderstanding. It is a must, if we truly want to converse, to not only understand each other but also to listen to one another. First of all, it is neither about establishing ourselves as a role model, nor teaching morality lessons to the whole world. The issue rather is to call to mind a few principles to which states, all states, have subscribed to by becoming members of the United Nations. The mission of our organisations – those NGOs that a number of states hardly appreciate – is to be the watchful guardians of these principles. To echo the expression often employed in the jargon of the United Nations, we are the "watchdogs" of democracy.

There is a second misunderstanding which often turns any encounter into a dialogue of the deaf. We apply the same rules, the same evaluation and monitoring tools, and the same framework to the various states. We can only be credible by being able to lift ourselves above any partisan choice and any ideological preference. As the French saying "*Balayer devant notre porte*" goes, we have to "clean up our own backyard". One cannot criticise an African or Asian country without having the same demanding mindset of a European or a North-American State. The issue is not to apply double standards and not to have selective retches and indignations of variable geometry.

There is a third misunderstanding that needs to be cleared up right away. As freedom, human rights and respect for others are unquestionable, universal values, who can, in all seriousness and in good faith, assert the contrary? This is not to say that the only performance model for a society is found in Western democracies. We know how to recognise the difference, and those who accuse us of confusing these values with our own social and institutional model often do so in a polemic spirit.

That being said, one is entitled not to share the same viewpoints as the NGOs; to consider that NGOs do not sufficiently take history, cultural constraints and other factors of any one state into account. Due to the criticisms of these NGOs, one can blame them for playing into the hands of the opposition. One may find these organisations too peremptory and too aggressive. That is for sure. But, please, let us avoid accusing them to be at the service of such and such. If we want the dialogue to move forward, please, let's trust in their good faith. It is true that among the hundreds of NGOs accredited to the United Nations, many – too many – have no credibility.

Whose fault is it? I would first point my finger at the political convictions of some of their leaders, but mostly at a large number of states that have created NGOs from scratch, and these NGOs serve their creators' interests and are devoted to them in order to counter attack criticism from civil society.

I am expressing myself on behalf of Reporters *sans Frontières* (Reporters without Borders). Trust me, we do not have any a priori positions, we are not here to do anyone's bidding, and we simply think that freedom of the press is necessary. If we want to build united societies that care for diversity, that are respected on the international stage, and that are able to step out of poverty and to glorify their own culture, if you want all these, you need a free and quality press. One cannot endlessly impose one's own choices, to make no allowances for the will of one's people, and to scorn the international community.

I am here today because I believe in promises and in commitments. I therefore expect the same attitude in return. I hope that we can talk freely to one another, without any diplomatic precautions, without stonewalling. When I quote certain countries, it is obviously not with a view to provoke, but to make my address less academic. Also, it would be pointless to be hypocritical. In any case, the states concerned will recognise themselves. I hope that they accept my frankness and do not take my words as insolence. Let me reiterate: the only thing we want, the only thing to which we aspire, is to bring forth this freedom of the press which, to us, seems essential for the smooth running of any society, in Europe just as much as in Asia.

Let us start with Europe and say it in a cursory way: except for Eastern European countries – Belarus and Russia notably – there are no major problems of press freedom. Of course, this assertion would need to be refined. The situation is not the same in Italy – where a concentration of media is known to be in the hands of one politician – as in Sweden or in Norway, which are something of a paradise for journalists and the press.

However, some issues remain that are not quite negligible. For instance, certain legislations still maintain prison sentences for press offences. Even if these laws are no longer implemented, they are a bad example for many southern countries which put journalists behind bars for defamation cases (these are not always proven) or for cases of claim against the Head of State, government officials etc. Special UN envoys on freedom of the press and freedom of speech have said time and time again that a media professional should not be put in jail on grounds of a press offence. This, of course, does not mean that journalists can write anything and everything, but there are other types of penalty more appropriate for these press offences.

One also faces another problem in Europe: in several countries, including France, the secrecy of journalistic sources is ill-protected. This is despite the fact that the European

Court of Human Rights has repeatedly explained in its judgments that this protection of sources (the possibility for a journalist to refuse to give the name of his or her informant to the police and also to the justice officers) is "a cornerstone of freedom of the press". In this respect, improvements are needed: one cannot ask others to improve certain points of their legislation if oneself is not above reproach.

Without getting into the debate on the quality of information provided to citizens, – there would be a lot to say: for the record, I will mention too close a link between some journalists and political or economic decision makers, perhaps too strong a taste for yellow journalism, a race for press scoops which sometimes manifests itself through the publication of articles which have neither been corroborated nor checked, etc. Without getting into this debate where our individual subjectivities prevail over more objective observations, I would like to highlight another issue of concern to European journalists: the issue of media concentration and media ownership. If everyone condemns the control of information bodies by the government – which does not mean that public radio and public television do not have their place – there is another danger which, this time, refers to the take-over of the media by some major groups which thereby can overly weigh on the plurality of information disseminated in some countries. We all have in mind the names of some media magnates. This concern comes along with concerns about the influence of advertisers and concerns about the nature of some media-owner groups which, in addition, depend on the state's procurement contracts for their other businesses. Such is the case in France: some major media companies are controlled by armament and public works groups that mostly depend upon state's procurement contracts. Hence, it only takes one step to imagine that the politicians in command of the state can weigh on these groups, and consequently on media. Some journalists of *Reporters sans Frontières* have already taken this step.

But all these issues, in some way, are the concerns of the rich of the spoilt children of democracy. Somewhat like the "Kisha Clubs" in Japan (press clubs set up within major government, political, business and consumer organisations), which too closely associate journalists to the institutions and companies that they are assigned to cover. Despite these problems, we can say that European citizens, like those of several major Asian democracies – from Japan to South Korea – are well-informed, and journalists are, all in all, free to work and criticise who they wish to.

It is not likewise in several Asian countries, some representatives of which are participating in this seminar. In this region of the world, in 2006, 16 journalists were killed, 328 were apprehended, 517 were assaulted or threatened, and 478 media entities were censored. In an attempt to justify this situation, the leading authorities of these countries use arguments that mostly revolve around the idea that in Asia, culture, history, the respective place of the individual and of the group would explain – and justify – the repeated violations of freedom of the press. I have said it from

the start of my address, the issue is neither for me to negate the specificities of the different nations, nor to advocate a unique operational model of society, but can one honestly justify imprisoning a journalist for years when his only mistake was to criticise the authorities? Do not tell me that he has betrayed the interests of his own country, disrespected the Head of State, or has made or written "counter-revolutionary" remarks. He has simply made an attempt to enjoy the same rights as his fellow journalists who live in democratic states. Nothing more, nothing less. And in doing this, he was only doing his job.

How can one justify the imprisonment of a journalist like Win Tin in Burma for over fifteen years? He is now over seventy years old. It is true, he is a friend of Aung San Suu Kyi, the Nobel Peace Prize laureate. Is it a crime? Like him, ten journalists or so are held in prison in this country. Foreign correspondents who wish to go to Rangoon face major difficulties. The press is living under the reign of censorship. By saying that, I am only expressing, as objectively as possible, a reality known to everyone here, and I am convinced that you condemn it. Burma is a beautiful country with great potential and it deserves more than this. I have been to camps populated by ethnic minorities (without authorisation, I must admit) along the border between Burma and Thailand. The situation of these men, women and children is difficult, even devastating. I understand that the Burmese authorities do not want the press to echo this, but it is a very bad policy to pick on the bearer of bad news. It is a policy compelled to fail.

I am not going to give you a complete overview of all the Asian countries that do not respect freedom of the press, and who thereby break their own commitments to ensure media freedom after signing, and even ratifying, Article 19 of the International Covenant on Civil and Political Rights (ICCPR). In order to assess the magnitude of broken promises, it seems nonetheless necessary to reconsider the attitude of some regimes towards those whose profession is to inform us. Let us start with China.

Over the past 15 years, the media has evolved in the People's Republic of China. Print media, radio, television stations, as well as Internet websites, have all become more numerous and more varied. Some of them no longer hesitate to address sensitive issues. The Communist Party, nevertheless, continues to exercise a quasi-absolute control over the media, whenever one raises the major political issues, the most important cases and, hence, when things go wrong, the most compromising ones. As a result, around 100 journalists, cyber dissidents and defenders of freedom of the press are currently in prison. The Internet remains under surveillance. Thousands of cyber-policemen are watching the Web. If one addresses issues relating to human rights: from the events of Tiananmen Square in 1989; to the fate of ethnic minorities in Tibet and Xinjiang; and to the repression of Falun Gong practitioners. International websites - like that of *Reporters sans Frontières* - are not accessible. The reception of some major international radio stations - like the BBC's Chinese service - are blurred. One could have expected

that with the Beijing Olympic Games in August 2008, the Chinese authorities would be committed to bringing forward freedom of the press, along with other freedoms that they had promised in their bid to host the Games back in 2001. It has not been the case. And those in the West who are obsessed with the Chinese market and with their dreams of profit turn a blind eye to this. Or worse, some large companies like Google, Yahoo! and Cisco have accepted to bend to the censorship imposed by Beijing, and even to cooperate with the Chinese police to track down dissidents.

One has trouble understanding why a huge country like China is afraid of a handful of journalists and internet users, who do nothing but denounce what the Chinese law itself decries. This attitude is, by the way, contrary to the Olympic spirit and to the Olympic Charter which notably advocates "Human Dignity". Where is the respect for dignity when a journalist is sentenced to years in prison for denouncing what ought to be denounced? It is proof of weakness and not of strength. When one is sure of oneself, of one's values and one's legitimacy, one then pays respect to others, one accepts it when others say what one does not wish to hear.

In this prize list of lawlessness, of arbitrary and unjustified violence, some other countries should be: Laos where the Communist Party controls the press with an iron hand; Vietnam, who imprisons critical voices (I am thinking of Father Nguyen Van Ly and the attorney-at-law Nguyen Van Dai, among others); Singapore, where the authorities only tolerate applause and sue opponents and international media; and Pakistan, where security forces secretly hold "annoying" journalists in prison. In Cambodia, progress has been observed – notably with the decriminalisation of defamation, which is a ground-breaker in Asia. One can however regret the persistence of pressures on media such as the Khmer Service of Radio Free Asia (*Radio Libre Asie*).

As I have said, they are too many whose daring, courage, and refusal to surrender, to bow to injustice and to the unacceptable have cost them their freedom. I cannot name them all, although they each deserve to be honoured. I wish to bring to mind not only the injustice done to them, but also the disservice done at the same time to their countries. Freedom of the press is not solely a moral imperative. It is not only an obligation under international law. It is also, above all, necessary for anyone who wants to develop their economy, to step out from under-development and to build a better future. One does not fight against corruption, against preferential treatment and dubious politicians if there is no press to investigate and to shed light where certain people would like to maintain a shadowy light auspicious for their funny business.

Therefore, when I hear certain people denounce with one voice the corruption that reigns in a country as well as too much freedom that some media enjoy, I say to myself that they are lying to us, or that they treat us like fools. Unless they are the ones who benefit from this very corruption. In addition, it is often the same ones

shouting out like white-tailed eagles when one talks about penalties and conditional assistance, as if it was abnormal that the convicted persons be penalised. Breaking the rules of international law to which one has willingly subscribed is a crime that must be penalised. As certain people would like us to believe, we are not dealing with an inadmissible interference in a state's internal affairs but, basically, with a normal and logical consequence for a state that has crossed the red line, that has excluded itself from the community of nations. According to the sacrosanct principle of national sovereignty, one believes one to be untouchable. One thinks one can act with full impunity. It has been the case for too long, times have changed.

The idea is not for us to make accusations, to judge one or the other, let alone to establish France as a model of virtue. Nevertheless, having little taste for self-flagellation, I will still say that it is better for a journalist to live in a democratic country. To be more precise: it is better to live in Japan than in Burma, in Spain than in China, in South Korea than in Laos. All the breaches of freedoms are not the same. They are more or less serious. Respecting one another in order to engage in meaningful exchanges does not mean – it is, at least, how I understand the word respect – that one lies to the other, that one conceals one's discrepancies, that one pleases oneself with big words and meaningless phrases. I have not come here to charm you, or to butter you up. I have come here in the hope of convincing you of our honesty, of our independence from any one dogma, of our will to bring forward values that we are convinced we all share.

One of my friends used to say that a person should only write what he or she is capable of saying to the other person's face, saying it face-to-face out of respect for others. I may have expressed it too bluntly but, believe me, I have no other intention than wishing Asians as much as Europeans to enjoy a more dignified, a more prosperous and a happier life in the future, while speaking the same language – without, however, necessarily using the same words and sharing the same ideas.

Thank you.

# CLOSING SPEECHES

- **Frédéric Tiberghien**  
*Coordinator & Representative of the  
Ministry of Foreign Affairs Republic of France*
- **Jan Axel Nordlander**  
*Ambassador-at-large for Human Rights  
Ministry for Foreign Affairs, Sweden*

**Frédéric Tiberghien**  
Coordinator & Representative of the Ministry of Foreign Affairs  
Republic of France

I would like to let you know how interesting I have found this eighth edition of our Informal Seminar, because it has shown that we are able to discuss sensitive issues on the implementation of fundamental human rights among government and civil society representatives. We thereby work in a spirit towards better long-term mutual understanding. If examples or instances related to some participants' countries have been raised, I believe that they were only a means to analyse the situation, to try to learn a common lesson and that it was never implied as a final condemnation. I believe that it is essential to be able to speak frankly to one another in a friendly manner, without resorting to final condemnation of one or the other. It was not the intended objective of this exercise and it turns out that it has not been the case.

The second contribution of this seminar is that we have drawn many recommendations which will be communicated in the following days to the ASEM governments. Looking back on the previous editions, I believe that we have drawn far more recommendations this time around. I believe it is useful to prove that our meetings can lead to conclusions and recommendations in order for our governments to take them into consideration and to implement better human rights protection in our two regions.

I would now like to reflect on seven issues that have struck me during all our discussions, and deserve to be more thoroughly considered.

First of all, I wish to mention one of the debates that we had yesterday afternoon, which revolves around fear. This refers to the fundamentally political nature of freedom of expression. We have acknowledged that there are citizens who are afraid to express themselves, who fear their governments' reactions.

We have also listed a second category of fear, which is that of government officials confronted by their own fears when they observe public opinion and crowds of citizens meeting or demonstrating against the government. They fear being brought down by uprisings when their citizens are deprived of the ability to express themselves.

The third category we have raised is the fear of established governments towards other political and social forces. We have discussed how government officials find it difficult

to accept power sharing and the transfer of power, which constitute the essence of democracy. This is yet another fear.

We have observed a fourth fear in our information age, which is present in all societies. This is the fear of those who think differently from us. This is, in short, the fear of others and a collective preference for the standardisation of thought, which is regarded as less threatening against the cohesion of society.

There is also the fear of responding to events occurring around us. We are all aware that citizens in many countries behave somewhat like cowards when confronted with events that they find unacceptable. I wish to take advantage of this side comment to let you know that I am happy that we have responded in particular to the events that are unfolding in Myanmar at the moment. Implementing human rights implies that from time to time, we have to stand against unacceptable practices and I therefore completely agree with what Ambassador Nordlander has said on behalf of both coordinators.

Let us acknowledge that behind the freedom of speech, we are dealing with fear. In this respect, I wish to bring to mind the political thinkers who questioned themselves on the foundations of society from as early as the seventeenth century. I am notably thinking of the contribution of the British philosopher, Thomas Hobbes. He emphasised the idea that the foundation of life in society was the necessity to gather in order to avert and exorcise our fears, and to avert others' violence, by forming a society. Through this issue of fear, we directly address to the fundamentally political nature of the freedom of speech. As noted by Hobbes, man is violent by nature, and he is fed by fears. Life in society justifies itself by the fact that it enables us to get rid of our collective fears.

One conclusion from this seminar is that freedom of speech is, in effect, one of the crucial paths towards the acceptance of those who think differently from us, that is to say of groups and minorities in our society, and finally to make it possible to live in a harmonious society. One contribution of freedom of speech which has been perfectly highlighted is that it helps to prevent conflicts; it is a means to learn about diversity and tolerance in our society, and it contributes to social stability. We therefore have to acknowledge that freedom of speech is a path opening onto this kind of exorcism of our fears, which explains the vital and fundamental nature of this freedom in our society and in democratic life.

The importance of international standards and institutions is the second point that I would like to retain from our discussion. We have brought to mind several times that freedom of speech results from international standards - which spell out many universal principles, values and rights - such as the Universal Declaration of Human

Rights, whose 60<sup>th</sup> anniversary will be celebrated next year, and both 1966 Covenants along with their additional protocols. I highlight from our discussions the importance for states to ratify the 1966 Covenant on Civil and Political Rights, as we have asserted that economic and social development does not necessarily bring about civil and political rights. It is therefore necessary for all states to also subscribe to these commitments, because civil and political rights are not automatic by-products of economic and social development.

We have also mentioned the 2005 UNESCO Convention on Cultural Diversity, as well as the 1998 instruments on the defenders of rights. These international instruments, whose relevance has been stressed, have to be included or incorporated into national laws. This is a crucial conclusion of our discussions; that states are invited to transform these principles and convert these values into operational modes through their national laws.

The creation of regional mechanisms for complaint monitoring and collection is fundamental for the respect of these rights. We have stated the role of the European Convention for Human Rights and Fundamental Freedom as well as the European Court of Human Rights, and also the importance of creating a regional agency dedicated to human rights within ASEAN. We clearly heard the support expressed by the Cambodian Prime Minister for this initiative and everyone naturally wishes that the setting up of this institution includes an appeal mechanism, because we all know that it is the very existence of complaint collecting mechanisms which truly enables the improvement of freedoms and human rights.

Finally, we need international organisations to both reinforce the capacities of the countries – including the states undergoing a transition process, which was largely addressed – and to serve the monitoring tool. Allow me here to use an English term which, in my view, is more concrete and a better illustration of their expected role: a "watchdog" for the different states. Regarding these institutions, I have also noted a concern which is a criticism that one needs to hear: we need to avoid double standards within international organisations. As everybody is entitled to the same rights, let us avoid implementing them in different ways according to the individual states.

I would like to briefly broach a third subject: the role of the state. Of course, it was a central but ambivalent topic in our discussions, because we require positive and negative actions from the state.

States are the ones required to implement international conventions and are therefore responsible for fulfilling these commitments with regards to the international community. They also have to set up national institutions; creating or defining the legal framework in which freedom of speech is organised. At this meeting, we have

emphasised that this legal framework should be permanently improved, for example, with the suppression of prison sentences for journalists. States are also in charge of organising the access of minorities to the media and to the means of expression, so as to empower them to articulate their views. In this respect, we have acknowledged and emphasised on migrant workers – and they are not the only ones – as an example of a minority group that we should be concerned about. It was proposed that states were invited to implement action plans to reinforce human rights: the example of Korea was brought up. In addition, we have stated the state's responsibility to create better access to information technology so as to narrow the digital divide between the rich and the poor, and between the young and the old, in our societies.

If states have positive actions to undertake, we have highlighted they have also to refrain from doing other things. We urge states to impose minimum interference when limiting the freedom of speech. We need the least possible state interference when censoring free speech, because freedom is the rule and restriction the exception. The Latvian representative at this meeting has spoken on the persistence of bureaucratic practices within states, thus showing the inherent tendency of states to monitor and penalise. "Surveiller et punir", such is the title of a famous book written by philosopher Michel Foucault that I have just quoted. Historically, states are inclined to organise institutions to control and penalise. This includes monitoring freedom of speech. While being aware of this, we urge states to impose minimum interference while, at the same time, to implement positive actions. We therefore have to remember that the role of the state is both positive and negative.

Moving on to my fourth point, we have drawn up a number of guidelines to improve the implementation of freedom of speech. As it is often stated in informal seminars, we are aware that we have enough international standards. For the time being, I am sidestepping the debate that came up this afternoon: shall we add one more standard to regulate the Internet? Although some of us are convinced about the necessity of a new international standard in this area, no consensus has been reached on this issue. So except on Internet regulation, we have expressed the view that there are sufficient international standards. The issue is not to add any more standards but to thoroughly apply the existing ones. We therefore need to focus on improving the implementation of existing standards. We are all aware that in the field of human rights the situation at any given moment is not what matters most, but rather, it is the trend, the direction, and the evolution.

Three crucial conclusions have been drawn up so far on the necessity to improve implementation:

Firstly, we need to improve the reporting on human rights and on the indicators. As far as indicators are concerned, we note that there are many but that they are not

coherent, not necessarily reliable, and not necessarily relevant. I therefore believe it would be an excellent recommendation to try to improve the dialogue on the nature of the indicators that we wish to keep, and on the ways to establish them and make them consistent.

We also put forward proposals to improve the reporting made by the states to international bodies in the field of human rights. I deeply believe that states progress in this field only when they are held accountable for doing something, and that reporting is something important. Once more, we encounter the term "accountability" when speaking of the responsibility of the state. Accountability is what enables a society to measure the improvement and progress in a certain direction.

We have raised a second crucial recommendation on how to improve implementation. It is the importance of national commissions for human rights to act as communicators and as bridges between national duties and the international framework. They provide a central platform and observation point from which the implementation of international standards can be monitored, and national standards can be improved.

A third guideline has been briefly addressed without thorough consideration: the need to have independent and valuable judges. In terms of freedom of speech, we have observed that there are many issues related to the balance between opposing currents. We therefore need to give further thought to deciding where to set the benchmark and strike the balance. We have all agreed that this balance shall not be set by governments, parliaments, or the fourth power (the media), but by the judge whose task is to say where, in effect, to position the balance between these opposing currents.

I would now like to broach a fifth subject relating to the various sources of concern that we have raised in our debates and that we need to consider more thoroughly.

The first source of concern refers to everything revolving around media concentration and its consequences in terms of information merchandising. We have asserted that information is not knowledge.

The second source of concern is the importance of journalists protecting their sources – in other words, the importance of anonymity – if we want to maintain a strong level of press freedom. The protection of sources is an important issue; as you may be aware, there are some ongoing attempts to reinstate this immunity.

The third source of concern, which has been addressed, is the recent fight against terrorism. It has moved the benchmark in many areas at the expense of freedom of speech. This is an issue to monitor with a watchful eye in the future.

Finally, the fourth concern which needs to be considered more meticulously, is regarding all aspects of criminalisation and press offences. There are some discussions that need to be continued, for instance, on the offense of blasphemy for which our methods, analyses and positions are not automatically corroborating between Europe and Asia.

On the other hand, bringing me to my sixth point, we have grounds for hope and satisfaction.

In this respect, we have noted, and I believe this is crucial, that the press product and the medium are not commodities like any other. It has a specific and special nature due to its implications for a functioning democracy. I am referring here to what is stated in the UNESCO Convention.

We have a second reason for satisfaction and hope. I have observed that many of us share a common view on the need to organise and make the fourth power – the media – accountable to independent organisations. Even if we have not delved into the definition of what an independent organisation is in order to regulate the media, I think that we all agree that ideally it would be an organisation that is independent from executive and legislative bodies and at the same time represents the stakeholders of society.

The third element of hope is that we are lucky to live in a period of time when technologies enable greater access to freedom of expression, most notably via the Internet. Each citizen now has access to a loudspeaker to be heard all over the world. This brings greater responsibilities, and some believe that it will evolve even further with mobile phones which, in the near future, will become the main means of disseminating ideas, because it will include the convergence of current media devices. We are also aware that in the forthcoming years we are going to reach a stage where this freedom of speech will be greatly strengthened. I have heard that, in effect, freedom will win in the end since technology is more on the citizens' side than on the governments' side. Some may disagree with this message, but it has nonetheless been expressed.

Finally, I would like to note that we have come across many different views on various issues. It is thus not surprising as we cannot agree on everything. I have noted eight issues where we have expressed different views on how to address them.

The first issue is the following: where are the main threats to freedom of speech? Two points of view have been expressed: the first one spells out that the main threat comes from government officials; and the second one reminds us not to forget threats from private interests, from conglomerates, monopolies and media owners, from those who control them, and from the market. We therefore observe that we have analyses that

are not necessarily convergent on this issue. The main threats naturally vary according to the nature of the states and according to the countries; they are not the same.

The second issue is that we do not necessarily have the same approaches. Europe, which was built on individual freedoms, emphasises above all the freedom of the individual. In Asia, where the concept of community prevails, the approach focuses on the need to preserve group cohesion. I also believe that it is interesting to observe what matters more and what is emphasised – individual rights or group cohesion. People have various assessments on the scope of freedom of expression; on the limits that can or cannot be accepted. Anyway, freedom of expression does not only belong to, and does not only rely on the journalists.

There is a third noteworthy point that has raised some divergences of opinion between us. Some favour legal texts, although we have all noted that they are sometimes imperfect or insufficient, while others address the subject through the implementation of these texts despite their imperfection. We therefore have two different views: either we value legal texts over their implementation, or we value their implementation over the legal texts themselves. This is a debate that arises quite frequently on human rights protection.

I am not going to repeat what we have said regarding the role of the state, which includes both positive obligations and requests for abstention, i.e. two different angles to consider the role of the state.

I also think that we have addressed with different perspectives the respective weights of self-regulation, the legal framework and also access to the judicial system. Some believe that issues of freedom of expression can be wholly or partially resolved through self-regulation, codes and ethical charters. On the contrary, others insist that they absolutely want a defined framework, accurate and clear laws, judges and access to the judicial system. I therefore believe that on this issue, we have a bone to pick. We may well need a bit of both: first, some self-regulation wherever possible, and eventually, clear laws and access to the judicial system.

We are also facing a dilemma on how and on what grounds to base ourselves? Where there are infringements on freedom of speech, what is of utmost importance: moral condemnation or judicial condemnation? Each of our societies has its own taboos, and the freedom of speech also serves to unveil these taboos. However, they should not trap us; we have to fight ideas with ideas. This refers to what has already been said about fear. Basically, fear cannot be overcome by a greater fear or by a greater terror, but by means of a battle of minds and of ideas. This battle between minds and ideas needs to be structured. This is the role and purpose of freedom of expression.

Finally, there is one last issue on which we have slightly differing views. It is the categorisation of countries. We have noted that there are developed countries, developing countries, countries in a state of transition, and even some static countries. I believe that these categories are useful even though they are contested. For now, I am not going to enter into philosophical debates on the freshness of the fish, figuratively speaking. I have understood that it is an extremely complex culinary topic that nonetheless deserves further inspection.

In conclusion, our works have been very concrete, very useful and very fruitful, and I sincerely wish to thank you. I believe that we were all here to improve on the protection of human rights, which rests on the cooperation between international stakeholders and organisations, states, members of civil society, media companies, journalists, NGOs and the citizens themselves. Therefore, this is also an invitation to continue this cooperation and dialogue if we want to improve on the right to freedom of speech. Somebody has mentioned before that human rights do not only exist in a utopia. We are here to turn this utopia into reality, since these principles need to be implemented, and we are all here to contribute to this task.

I thank you for your participation.

**Jan Axel Nordlander**  
Ambassador-at-large for Human Rights  
Ministry for Foreign Affairs, Sweden

It is logical that a seminar on freedom of speech takes place in Cambodia, a country which is one of the most accomplished in the region in terms of their respect for freedom of speech, especially with regard to print media. I am confident that this seminar that we are about to close today will contribute to further inspire the leading authorities of all countries to strengthen and promote freedom of speech in all its forms, whether printed, televised, electronic, or simply spoken. Freedom of speech and information enables every citizen to actively, and wisely, participate in social, economic and political life, and contribute to the creation of a better future for society.

In this respect, I remember the relevant remark of one of the special United Nations (UN) envoys on human rights. He said that without freedom of information, without freedom of speech, citizens are never sufficiently informed so as to vote with accuracy. He added that without freedom of movement, voters cannot make their way to ballot boxes, and neither can politicians spread their messages throughout the country. He observed that without freedom of assembly, political meetings – elections, for instance – or discussions organised by civil society cannot be held, and therefore democracy suffers.

I will now speak on behalf of France. Unfortunately, the events currently unfolding in an ASEM member country have brought to mind the inter-dependency of the freedoms of thought, expression, association, and assembly. All these freedoms, and even the basic right to participate in public life, have once more been severely infringed upon by the Burma/Myanmar regime. The military has responded to the peaceful marches of religious groups and civilians with a violent crackdown on protesters, amounting to attacks, killings and abductions of their own people.

Burma is a country experiencing severe economic and social development problems. However, the drastic deprivation of freedoms that the Burmese people have suffered for almost twenty years clearly appear to be the reason for the country's socio-economic problems and not, as some are inclined to believe, a supposedly efficient method to allow the country to progress on the track to advancement. The painful events which are unfolding a few hundred kilometres away from where we are gathered illustrate,

in a tragic way, the conclusions of our seminar: there cannot be any development, any social progress or any democracy without fundamental freedoms, without any freedom of speech.

Please allow me to express once again my congratulations to the host country and to the organisers of this seminar. It has gathered interested people from both continents in this wonderful place, which has enabled us to review together, not only the substance and the possible improvements of the right to freedom of speech, but also the universality of human rights as it was defined in Vienna in 1993, namely their validity everywhere for each of us. I do believe that we have bridged and strengthened the understanding of our different points of view, in support of the development of this fundamental right: freedom of speech.

## Seminar Programme

Wednesday, 26 September 2007

Chair	Mr Rolf Ring Deputy Director, Raoul Wallenberg Institute, Sweden
Welcome Remarks	H.E. Om Yienteng President, Cambodia Human Rights Committee
Introduction to the Seminar on Behalf of the Organisers	Mr Frédéric Tiberghien (20 min) Coordinator & Representative of the Ministry of Foreign Affairs State Counselor (Conseiller d'Etat) Republic of France
Keynote Speeches	Dr Shashi Tharoor Former Under-Secretary-General for Communications and Public Information United Nations  Mr Robert Ménard Secretary-General Reporters without Borders

## Thursday, 27 September 2007

Remarks	Ambassador Wonil Cho Executive Director Asia-Europe Foundation
Introduction of the Prime Minister H.E. Samdech Hun Sen	H.E. Om Yientieng President, Cambodia Human Rights Committee
Welcome Speech	H.E. Samdech Hun Sen Prime Minister Kingdom of Cambodia
Working Group 1: Political Rights	Chair: Mr Rolf Ring, Deputy Director, Raoul Wallenberg Institute, Sweden Rapporteur: Mr Roby Alampay, Director, South East Asia Press Alliance
Working Group 2: Cultural Rights	Chair: Ms Fumiko Saiga, Ambassador for Human Rights, Japan Rapporteur: Mr. Arnaud Dubus, Journalist, Le Temps and Liberation
Working Group 3: Roles and Relations of State-Civil Society, International Organisations	Chair: Mr Frédéric Tiberghien Rapporteur: Prof Kevin Boyle, Director, Human Rights Centre, Essex University
Working Group 4: Impact of ICT	Chair: Dr Eamonn Conway, Director, Centre for Culture, Technology & Values, Mary Immaculate College, University of Limerick, Ireland Rapporteur: Dr Cherian George, Acting Head, Journalism & Publishing, Wee Kim Wee School of Communication & Information, Nanyang Technological University, Singapore

Friday, 28 September 2007

Closing Plenary

Rapporteurs' Summaries

Chair:  
Mr Bertrand Fort, Asia-Europe Foundation

Working Group 1  
Mr Roby Alampay

Working Group 2  
Mr Arnaud Dubus

Working Group 3  
Prof Kevin Boyle

Working Group 4  
Dr Cherian George

Special Panel:  
"What is the Future of  
Freedom of Expression  
in Asia and Europe?"

Chair:  
Mr Kassie Neou,  
President,  
Peace & Development Institute

Panelists:  
Ms Ilze Brands Kehris,  
Director, Latvian Centre for Human Rights

Mr Martyn See,  
Independent Film Maker, Singapore

Mr Rolf Timans,  
Head of Unit Human Rights and Democratisation,  
European Commission

Dr Homayoun Alizadeh,  
Regional Representative for South-East Asia,  
Office of the United Nations High  
Commissioner for Human Rights

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Secretary-General  
Reporters Sans Frontières
- India**                Dr Shashi THAROOR  
Former Under-Secretary-General for  
Communications and Public Information United Nations

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University of Essex
- Singapore**        Prof Cherian GEORGE  
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Southeast Asian Press Alliance

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## About The Organisers

The **Asia-Europe Foundation (ASEF)** advances mutual understanding and collaboration between the people of Asia and Europe through intellectual, cultural, and people-to-people exchanges. These exchanges include conferences, lecture tours, workshops, seminars and the use of web-based platforms. The major achievement of ASEF is the establishment of permanent bi-regional networks focussed on areas and issues that help to strengthen Asia-Europe relations. Established in February 1997 by the partners of the Asia-Europe Meeting (ASEM), ASEF is the only permanent physical institution of the ASEM process. Since 1997, the Foundation has initiated projects engaging 14,000 individuals from Asia and Europe. ASEF works in partnership with other public institutions and civil society actors to ensure its work is broad-based and balanced among the partner countries.

Website: [www.asef.org](http://www.asef.org)

The **Raoul Wallenberg Institute** of Human Rights and Humanitarian Law is an independent academic institution dedicated to the promotion of human rights through research, training and education. Established in 1984 at the Faculty of Law at Lund University, Sweden, the institute is currently involved in organising, in Lund, two Masters Programs and an interdisciplinary human rights programme at the undergraduate level. Host of one of the largest human rights libraries in the Nordic countries and engaged in various research and publication activities, the Raoul Wallenberg Institute provides researchers and students with a conducive study environment. The Institute maintains extensive relationships with academic human rights institutions worldwide.

Website: <http://www.rwi.lu.se>

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For more information, please visit our website: <http://www.diplomatie.fr>

The seminar was hosted by the **Cambodian Human Rights Committee (CHRC)**. The CHRC was set up in 2000 to assist the Cambodian government in protecting, upholding and developing human rights and democracy in Cambodia. It is responsible for monitoring human rights violations and processing complaints, and is also in charge of conducting public education and dissemination of information on human rights. CHRC cooperates with the national institutions responsible for children's and women's rights, the Cambodian National Council for Children's Rights and the Ministry of Women and Veteran's Affairs respectively. CHRC also supports and collaborates with civil society groups working on human rights in Cambodia.

## About the Informal ASEM Seminar on Human Rights Series

On the occasion of the first meeting of ASEM Foreign Ministers in Singapore in February 1997, Sweden and France had suggested that informal seminars on human rights be held within the ASEM framework. The aim of this initiative was to promote mutual understanding and co-operation between Europe and Asia in the area of political dialogue, particularly on human rights issues.

### Previous seminar topics include:

- Access to justice; regional and national particularities in the administration of justice; monitoring the administration of justice. (Sweden | 1997)
- Differences in Asian and European values; rights to education; rights of minorities. (China | 1999)
- Freedom of expression and right to information; humanitarian intervention and the sovereignty of states; is there a right to a healthy environment? (France | 2000)
- Freedom of conscience and religion; democratisation, conflict resolution and human rights; rights and obligations in the promotion of social welfare. (Indonesia | 2001)
- Economic relations; rights of multinational companies and foreign direct investments (Sweden | 2003)
- International migrations; protection of migrants, migration control and management (China | 2004)
- Human rights and ethnic, linguistic and religious minorities (Hungary | 2006)

### The formula employed is as follows:

- each ASEM government nominates an official representative and the organisers invite two civil society participants from each of the 16 Asian ASEM countries and one from each of the 27 European ASEM countries;
- an agenda structured around the main topics related to the subject of the seminar, with discussions held in working groups;
- closed-door debates to allow free and direct exchanges of view; and,
- a set of recommendations elaborated collectively to be sent to the relevant institutions in ASEM countries as informal contribution to the official Asia-Europe dialogue.

The Seminar series is co-organised by the French Ministry of Foreign Affairs and the Raoul Wallenberg Institute (delegated by the Swedish Ministry of Foreign Affairs) and the Asia-Europe Foundation (ASEF), which has acted as the Secretariat of the Seminar since 2000.

Supervision of the seminar is entrusted to a Steering Committee, composed of the Seminar's three co-organisers as well as representatives of the ministries of Foreign Affairs of China and Indonesia, as well as the European Commission.

**The Informal ASEM Seminar on Human Rights Series is a partnership between:**



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