2005 Joint Declaration by the Three Special Mandates for Protecting Freedom of Expression

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This note reviews the Joint Declaration adopted by the three special mandates for protecting freedom of expression - the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression - on 21 December 2005, which focuses on two issues, freedom of expression and the Internet, and anti-terrorism measures.

The three special mandates have adopted a Joint Declaration with the assistance of ARTICLE 19, Global Campaign for Free Expression, every year since 1999 (see IRIS 2005-2: 2 and IRIS 2004-2: 6). Each year, the Joint Declaration focuses on different thematic issues. In the past it has canvassed such issues as defamation, broadcast regulation, attacks on journalists, access to publicly-held information, and secrecy laws.

The most important contribution of the Joint Declaration in the area of anti-terrorism measures is to warn against the use of unduly vague terms in anti-terrorist legislation - such as `glorifying' or `promoting' terrorism - and to call on States to limit any new restrictions on freedom of expression to true cases of incitement to terrorism, defined as, “a direct call to engage in terrorism, with the intention that this should promote terrorism, and in a context in which the call is directly causally responsible for increasing the actual likelihood of a terrorist act occurring”.

The main focus of the 2005 Joint Declaration is on the Internet. It calls for Internet regulation to respect freedom of expression, taking into account the special nature of the Internet, and not to impose filtering systems which are not end-user controlled or to require websites, blogs and so on to register with the authorities. On the issue of Internet content, the Joint Declaration calls for liability for ISPs and other carriers to be imposed only where they adopt the statements as their own or where they have refused to obey a court order to remove them. It also calls for jurisdiction to be asserted in Internet content cases only in the State of establishment of the author or States to which the content is specifically directed.

The Joint Declaration also weighs in on the issue of Internet governance, a topical one given that consultations on the Internet Governance Forum were just initiated

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on 16-17 February 2006, in Geneva. It calls for Internet oversight bodies to be independent of government, political or commercial control, in similar fashion to democratic broadcast regulators. Although clearly principled, this is also controversial, given that the present regulator, ICANN, operates in accordance with a memorandum of understanding with the US Department of Commerce.

The Joint Declaration calls for corporations which provide Internet searching and other services to work together to resist official attempts to control or restrict use of the Internet. With Yahoo, Google, Microsoft and Cisco all on the defensive after criticism of their operations in China, including at US Congressional hearing, this is quite as topical and controversial as the Declaration's Internet governance recommendations.

The Joint Declarations, while not formally legally binding, play an important normative role and are relied upon extensively by NGOs, lawyers and others. The 2005 Joint Declaration, for example, has already been quoted in the context of the role of Internet corporations in defending Internet freedom. As such, they make an important contribution to global standard-setting in the area of freedom of expression.

Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 21 December 2005

http://www.article19.org/pdfs/standards/three-mandates-dec-2005.pdf

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