



General Assembly

Distr.: General
2 July 2012

Original: English

Human Rights Council

Twenty-first session

Agenda items 2 and 3

Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Summary of the Human Rights Council panel discussion on the promotion and protection of freedom of expression on the Internet

Report of the Office of the United Nations High Commissioner for
Human Rights

I. Introduction

1. On 29 February 2012, pursuant to Human Rights Council decision 18/119, the Council held a panel discussion on the right to freedom of expression on the Internet at its nineteenth session. In its decision, the Council also requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to liaise with relevant special procedures, States and other stakeholders, including relevant United Nations bodies and agencies, with a view to ensuring multi-stakeholder participation in the panel discussion, and to prepare a report on the outcome of the panel discussion in the form of a summary.

2. The panel discussion was aimed at (a) drawing the attention of the international community to the current challenges to the enjoyment of the right to freedom of opinion and expression on the Internet; (b) identifying positive and practical steps that Member States could take to respect, protect and promote the right to freedom of expression on the Internet; and (c) identifying positive and practical steps that Member States could take on the key recommendations of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

3. The panel discussion was chaired by the Vice-President of the Human Rights Council, moderated by journalist Riz Khan and opened by the High Commissioner. The panellists were the Minister for Foreign Affairs of Sweden, Carl Bildt; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue; the Executive Director of the Association for Progressive Communications, Anriette Esterhuysen; the Executive Director of the Centre of Research, Studies and Learning (Brazil), Carlos Afonso; the Head of Free Expression, External Relations, Communications and Public Affairs of Google (Belgium), William Echikson; and the Commissioner of the National Human Rights Commission of Indonesia, Hesti Armiwulan.

II. Statement by the United Nations High Commissioner for Human Rights and contributions of panellists

4. The High Commissioner, in her opening remarks, congratulated Sweden and the other co-sponsors on having brought such an important discussion to the Human Rights Council, and welcomed the innovative format of the discussion. She stated that the Internet had become an indispensable tool for people to receive information beyond that prepared and disseminated by traditional mass media. At the same time, the Internet allowed all users to become providers of information by offering people a global and public online space for exchanging information and ideas. In particular, she noted how human rights defenders had quickly claimed the audiovisual and crowdsourcing capacities of the Internet to document human rights violations and to share them in real time with a global audience. Indeed, as a result of such unique characteristics, the Internet had transformed human rights movements, as States could no longer exercise control by claiming a monopoly over information. She expressed concern, however, that this has resulted in a backlash and intensified attempts to unduly restrict access to online content or the Internet as such. She also expressed concern that measures aimed at preventing criminal activity on the Internet may be used to crack down on human rights defenders, suppress dissent and withhold “inconvenient” information. She also cautioned that private companies could undermine the enjoyment of the right to freedom of expression on the Internet, for example by illegally disclosing personal information to States without any court order, undertaking censorship on behalf of States or secretly collecting personal information and using it for commercial purposes without the user’s knowledge or consent. She stressed the need for any laws or measures

that restrict access to online content to be appropriate and necessary to address genuine concerns effectively. Lastly, the High Commissioner urged States to continue their efforts to bridge the digital divide to attain universal Internet access for all.

5. The Minister for Foreign Affairs of Sweden, Carl Bildt, pointed out that it was critical that the panel discussion be held at the current time because of the rapid spread of the Internet throughout the world and its link to economic and social development. He highlighted the need to protect the enjoyment of human rights in the online world and emphasized that Internet freedom had become critical for the future protection of freedoms and human rights around the world. He stated that hate speech and incitement to promote hate speech should and could be addressed by the same laws in the Internet domain as in the print media, emphasizing that there was no reason why rules should be different online than offline.

6. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, stressed that new human rights standards were not needed for the Internet, because human rights principles and doctrines applied both offline and online. He emphasized that the same basic principles of the right to freedom of expression would apply, regardless of the medium. The interactive nature of the Internet gave it special power; it should be seen as a necessary element for the exercise of many rights in the socio-economic arena and to promote cultural diversity in the world. The Special Rapporteur commented on the rising trend of criminalizing Internet users and of transferring the responsibility of blocking and filtering online content to intermediaries. He stressed the need for a multi-stakeholder dialogue to establish acceptable mechanisms for blocking and filtering content. He emphasized the fact that access to the Internet, in terms of both content and infrastructure, is a question of freedom of expression.

7. The Executive Director of the Association for Progressive Communications, Anriette Esterhuysen, observed that the failure to find a clear path for establishing human rights protection on the Internet could lead Governments to miss an enormous opportunity. This was due to the fact that new technologies provided States with the ability to expedite the protection and promotion of all human rights, especially in the area of education. While recognizing the need for due process and strong rule of law, she emphasized that States should focus on the opportunities provided by the Internet rather than the risks, and highlighted the unsustainable nature of restricting access. She concluded that Member States had raised important questions during the panel discussion, and called on all stakeholders to continue dialogue.

8. The Executive Director of the Centre of Research, Studies and Learning (Brazil), Carlos Afonso, observed that conflicting laws presented a challenge to a representative democracy like Brazil. He gave the example of attempts being made in Brazil to approve in Congress a civil rights framework for the Internet that would incorporate the rights to privacy and access, but that was in conflict with other laws. He noted that such conflicts necessitate debate and public consultation. He commended the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for his report, and pointed out that regulation was not simple and needed to take into account the particular characteristics of each country.

9. The Head of Free Expression, External Relations, Communications and Public Affairs of Google (Belgium), William Echikson, stated that the major challenge today was how to maintain freedom on the Internet in the light of the restrictions on Internet usage in 40 countries, a figure that had risen considerably in recent years. According to Mr. Echikson, Google products were either banned or blocked in 25 of the 150 countries where the company operates. Google recognized its responsibilities, and that if it was given a legitimate court order to take down content, then it would do so. Mr. Echikson, however, underlined the need for greater transparency with regard to the type and amount of content

that Internet service providers were requested and required to remove from the Internet. He also stressed that corporations could not be held responsible for deciding what content should be taken down.

10. The Commissioner of the National Human Rights Commission of Indonesia, Hesti Armiwulan, observed that financial constraints limited the right to have access to the Internet, and that an effort should be made to reduce the cost of access. She pointed out that the Government of Indonesia balanced rights and obligations with regard to the freedom of expression on the Internet with the need for the criminalization of certain acts on it. She emphasized the fact that the State played an important role in promoting the right to freedom of expression, particularly through training, raising awareness and working together with national institutions of human rights, civil society and universities.

III. Summary of the discussion

A. Role of the Internet and challenges to the right to freedom of expression

11. In the discussion that followed, several delegations stressed the important role of the Internet in the promotion and protection of human rights. It was noted that the Internet had been instrumental in facilitating the enjoyment of the right to freedom of opinion and expression, the flow of information and ideas, and the mobilization of civil society movements.

12. In addition to the issue of the right to freedom of expression on the Internet, some delegates underlined its role in promoting economic, social and cultural rights, including the rights to education, health and development. In this connection, some delegates pointed out that restrictions on the use of the Internet could lead to substantial opportunities being lost.

13. A number of delegates expressed their concern that online content was being unduly filtered, blocked or subjected to censorship, and that there was an increasing trend to criminalize activities on the Internet. It was noted that restrictions on the right to freedom of expression on the Internet should be the exception and strictly in conformity with international law and standards. Concern was expressed about the existence of a wide range of surveillance software used for limiting or violating the rights of individuals who expressed their views and opinions on the Internet.

14. In their statements, several delegates and speakers stated that limitations on access to the Internet were a key barrier to exercising the right to freedom of expression on the Internet. It was also highlighted that, since access to the Internet concerned both content and infrastructure, there was a strong need for transfer of technologies to reduce the digital divide in and among countries around the world. In addition, there was a strong relationship between issues of intellectual property and access to the Internet. Some delegates highlighted the crucial role that private companies played in this regard.

15. Several delegates also expressed concern at the “abuse” of the right to freedom of expression on the Internet, which could undermine national security and social stability, incite hatred and exacerbate tensions. It was also noted that the Internet could be misused for criminal purposes, including for child pornography and human trafficking. It was suggested that further discussion was necessary in order to find effective ways to address these issues.

16. Representatives of non-governmental organizations, as well as some delegates, called for greater transparency and accountability of Internet service provider companies. Concerns were raised with regard to the issues related to online content and the availability

of technologies and software that could be used for surveillance, filtering or blocking the Internet and that might unduly infringe the human rights of individuals. It was also noted that the activities of private sector entities providing intermediary services should be in line with international human rights standards, and that the complicity of service provider companies in unlawful breaches of human rights should be considered a violation of international law. Private sector representatives stressed the need for greater transparency in the relevant regulatory framework, for instance with regard to the type and volume of content that Internet service providers are required to remove from the Internet.

B. International norms and standards applicable to the right to freedom of opinion and expression on the Internet

17. Many delegates raised the question of how best to regulate or address prohibited types of expression under international human rights law, such as child pornography, without such grounds being used to censor legitimate types of expression. Several delegates pointed out that there should be no restriction on the flow of information on the Internet, except for certain exceptional cases when international human rights law and standards are violated, and that self-regulation should be promoted. Several delegates suggested enhancing the implementation of existing principles of international human rights law in an online context, such as the relevant provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

18. Many delegates concurred with the Special Rapporteur that there was no need to create new rules and laws for the right to freedom of opinion and expression on the Internet, as the same existing international human rights laws and standards should be applied as much to the online world as to the offline world.

19. A question was raised by some delegates with regard to how existing international human rights standards could be improved to better ensure protection of human rights on the Internet.

C. Proposals to enhance the enjoyment and protection of the right to freedom of opinion and expression on the Internet, and recommendations for the Human Rights Council

20. Several delegates suggested that, in order to enhance the enjoyment of the right to freedom of opinion and expression on the Internet, arbitrary censorship and restrictions should be avoided.

21. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, as well as some delegations, recommended that a greater effort should be made to ensure Internet access for all, for example through international cooperation on technology transfer and Internet infrastructure development.

22. Several delegates recommended finding better ways to provide equal access to the Internet, including for disadvantaged groups.

23. The Special Rapporteur recommended the adoption of a resolution or declaration calling on States to refrain from unnecessary restrictions on the right to freedom of expression on the Internet and to allow for its broader use.

24. The panellists and a number of delegations encouraged continued discussion by the Human Rights Council on the issue of the right to freedom of expression on the Internet with a view to reaching a broad consensus on the issue.

25. A representative of a non-governmental organization suggested a draft resolution or convention on the protection of journalists, including bloggers. A suggestion was also made that the issue of technologies used by “repressive” political regimes, with the complicity of private enterprises, to limit the freedom of opinion and expression on the Internet, should be discussed. In this regard, a recommendation was made for the creation of a global standard applicable to all private companies to ensure the same degree of transparency and accountability. The importance of multi-stakeholder dialogue for reaching a consensus on the issue of the Internet and freedom of expression was also stressed.

26. A representative of a private company called on other companies to join the Global Network Initiative to set common rules for the private sector to best respect human rights on the Internet.

27. Some delegates proposed that a resolution or declaration be adopted by the Human Rights Council on the issue of combating cybercrime.

28. In his concluding remarks, the Vice-President of the Human Rights Council stated that the panel discussion had provided an excellent opportunity to discuss the issue of freedom of expression on the Internet. He looked forward to the continuation of the debate on this important issue at future sessions of the Council.
