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– ACTA UNIVERSITATIS UPSALIENSIS –

FREEDOM OF INFORMATION

AS A PROJECT OF INTERNATIONAL LEGISLATION

A Study of International Law in Making

BY

HILDING EEK

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A.-B. LUNDEQUISTSKA BOKHANDELN

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Foreword

The author of the present study had the privilege of spending four years at the Secretariat of the United Nations in New York and of following closely the work of the various organs of the United Nations entrusted with the task of finding ways and means for promoting freedom of information throughout the world. He has, of course, drawn upon this experience. It should, however, be clearly stated that the views and opinions expressed in this study are the author's and do not necessarily coincide with those of the Secretariat or any other organ of the United Nations.

Uppsala, February 1953

Hilding Eek

United Nations Documents Relating to Freedom of Information

The United Nations Conference on Freedom of Information, Geneva, 23 March to 21 April, 1948.

Final Act: document E/CONF. 6/79. It contains the draft conventions proposed by the Conference and the resolutions adopted by it.

The document series E/CONF. 6/ — includes the various studies and other papers submitted to the Conference by the Secretariat of the United Nations, the proposals and amendments submitted by delegations and the summary records of the meetings of the Conference and its committees. The draft conventions were discussed in the plenary and in the First (Political) Committee and the Fourth (Legal) Committee of the Conference.

The Sub-Commission on Freedom of Information and of the Press.

The reports of the five sessions, held by the Sub-Commission, are found in documents E/441, E/CN. 4/80, E/CN. 4/Sub. 1/98, E/1672 and E/2190.

The various studies, proposals, amendments and working papers, submitted to the Sub-Commission, as well as its summary records are contained in the document series E/CN. 4/Sub. 1/ —.

The Sub-Commission did not deal with the draft conventions in the field of freedom of information. Several studies prepared by the Secretariat and submitted to the Sub-Commission are, however, concerned with problems related to intergovernmental agreements in the field of freedom of information. Among such studies are the following:

"The international convention concerning the use of broadcasting in the cause of peace, Geneva, 1936" (E/CN. 4/Sub. 1/104).

"Classification of existing agreements in the field of freedom of information" (E/CN. 4/Sub. 1/105).

"Survey of obstacles to the free flow of information" (E/CN. 4/Sub. 1/106).

"Survey of international agreements concerning telecommunications" (E/CN. 4/Sub. 1/110).

"Study of measures to promote the dissemination of true information" (E/CN. 4/Sub. 1/112).

"The possibility of establishing an international court of honour for information personnel" (E/CN. 4/Sub. 1/139).

"Study of the law and practice governing the status and work of foreign news personnel and measures to facilitate the work of such personnel" (E/CN. 4/Sub. 1/140).
"Means of protecting sources of information of news personnel" (E/CN. 4/Sub. 1/146).
"Study relating to the definition and identification of foreign correspondents" (E/CN. 4/Sub. 1/148).
"Technical assistance and national information enterprises" (E/CN. 4/Sub. 1/149).
"Financial obstacles to freedom of information" (E/CN. 4/Sub. 1/150).
"The independence of news personnel" (E/CN. 4/Sub. 1/154).
"Freedom to listen" (E/CN. 4/Sub. 1/155).
"Radio and freedom of information" (E/CN. 4/Sub. 1/156).

A series of studies prepared for the Sub-Commission by UNESCO are listed in document E/2231/Add. 1.

The General Assembly

Freedom of information was discussed in the Third Committee and in plenary sessions of the General Assembly in connexion with the reports of the Economic and Social Council.

The draft conventions proposed by the Conference were discussed at the second part of the Third Session of the General Assembly. The documents and summary records of the Third Committee are contained in the document series A/C.3/ —. The text of the Convention on the International Transmission of News and the Right of Correction, adopted by the General Assembly on 13 May 1949 (Resolution 227 C(III)), is contained in document A/876.

In 1950, the General Assembly appointed a special committee for the revision of the Draft Convention on Freedom of Information, the *Committee on the Draft Convention on Freedom of Information.* The documents relating to the work of this committee are contained in the document series A/AC.42/ —. The report of the committee was published as document A/AC. 42/7.

Extensive debates on freedom of information occurred in 1952 at the seventh session of the General Assembly, resulting *inter alia* in the adoption of a separate Convention on the International Right of Correction. A useful guide to these debates is the report of the Third Committee of the General Assembly, contained in document A/2294.

The Economic and Social Council

The Council has dealt with problems relating to freedom of information in considering the Final Act of the Conference and the reports of the Sub-Commission. Verbatim records of the discussion in the plenary are found in the Official Records of the Council. The documents relating to the work of the Social Committee of the Council are contained in the document series E/AC. 7/ —.

The first of the three draft conventions proposed by the Conference was discussed at the Seventh Session of the Council. The third draft convention was discussed at the Thirteenth Session.

The following Council documents deal particularly with problems relating to the draft conventions:

"Comments by governments on the draft conventions", documents E/856 and Addenda.

"Suggestions and observations of governments on the draft convention (on freedom of Information)", documents E/2031 and Addenda.

"Legal problems raised by certain amendments to the draft convention (on freedom of information). Memorandum by the Secretary-General", documents E/2046 and Add. 1.

The future work of the United Nations in the field of freedom of information was discussed at the Fourteenth Session of the Council on the basis of a memorandum submitted by the Secretary-General as document E/2217.

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Problems relating to freedom of information have been discussed also in connexion with the Universal Declaration of Human Rights and the Draft Covenants on Human Rights. These discussions took place at the General Assembly, the Economic and Social Council and the Commission on Human Rights. The documents relating to the work of the Commission on Human Rights are contained in the document series E/CN. 4/ —. Problems relating to the reduction, simplification and unification of passports and frontier formalities have been studied by the Transport and Communications Commission; documents relating to its work are contained in the document series E/CN. 2/ —.

Information received from governments was published by the Secretary-General in a printed volume "Freedom of Information — A Compilation", United Nations publications, Sales No. 1950 XIV.1. Volumes I and II. — Additional information from governments are to be found in documents E/CN. 4/Sub. 1/107 and Addenda.

CHAPTER I

Introductory

Fifty-seven governments were represented at the United Nations Conference on Freedom of Information which met in Geneva on 23 March 1948. The political post-war climate was already chilly, but there was an unmistakeable enthusiasm among the delegates for the task of finding means and ways for safeguarding and promoting freedom of information throughout the world. The importance of an unhampered flow of information and opinion both within and across frontiers had been stressed again and again during the war and during the period of preparation for the new world organisation. Moreover, the General Assembly of the United Nations at its first session had declared freedom of information "a fundamental human right", the touchstone of all the freedoms to which the United Nations is consecrated", and "an essential factor in any serious effort to promote the peace and progress of the world".

The Conference constituted a serious effort to promote peace and progress by laying down a policy for the United Nations in the field of information. Its Final Act includes a series of resolutions which recommend constructive action, and three draft Conventions. Their objective was in the terms of their preambles, to implement the right of the peoples to be fully informed, to sharpen the sense of responsibility of the various media of information and to promote the peace and welfare of mankind by means of the free interchange of information and opinion.

The enthusiasm shown at the Conference soon changed into indifference on the part of many governments. As a consequence, the achievements of the United Nations during recent years in the field of freedom of information are insignificant. As concerns the conventions proposed by the Conference none of them has entered into force and the text of the draft Convention on Freedom of Information has not even been finalized. The United Nations is at present reviewing its activities in the field of freedom of information. This review involves political considerations of varicus kinds. In this book we shall try to appraise problems of a more technical or legal nature which relate to the extensive preparatory work for international legislation concerning the Press, the radio and newsreels already accomplished by the United Nations. Before

outlining the various aspects of the problems to be studied, it seems advisable briefly to introduce the international instruments which may be described as the main projects of international legislation affecting freedom of information and which are going to be discussed in the following chapters.

The Universal Declaration of Human Rights.

The Declaration was proclaimed by the General Assembly of the United Nations on 10 December 1948 "as a common standard of achievement for all peoples and all nations". Article 19 of the Declaration deals with freedom of information. (See Appendix 1 of the present study.)

The Draft International Covenant on Human Rights.

The text of this instrument is still provisional. There have been differences of opinion within the organs of the United Nations entrusted with its drafting, as to the advisability of adopting one or several covenants. At its eighth session the Commission on Human Rights divided the covenant into two instruments, one dealing with economic, social and cultural rights and the other with civil and political rights. The Draft International Covenant on Civil and Political Rights includes in article 16 provisions relating to freedom of information. (Appendix 2.)

The Convention on the International Transmission of News and the Right of Correction.

The first of the three draft conventions, proposed by the 1948 conference, was called "Draft Convention on the Gathering and International Transmission of News". The text was based on a proposal by the delegation of the United States of America. The second draft convention, originating in a French proposal, was called "Draft Convention Concerning the Institution of an International Right of Correction". The General Assembly of the United Nations decided on 13 May 1949 to merge these two draft conventions into one, the Convention on the International Transmission of News and the Right of Correction. The convention, thus adopted, has not yet been opened for signature. The text is reproduced below as Appendix 3.

The Convention on the International Right of Correction.

On December 1952 the General Assembly adopted a separate Convention on the International Right of Correction, consisting of the provi-

sions relating to the right of correction in the 1949 convention, the preamble of that convention and some of its final clauses. The General Assembly also decided that the new convention should be opened for signature at close of its session. (Appendix 4.)

The Draft Convention on Freedom of Information.

The third of the three draft conventions proposed by the 1948 conference originated in a proposal to the conference by the delegation of the United Kingdom of Great Britain and Northern Ireland. In 1949 the Third Committee of the General Assembly re-drafted articles 1 to 4 inclusive. At its session in 1950 the General Assembly set up a "Committee on the Draft Convention on Freedom of Information" to revise the text as a whole. The Committee prepared a preamble and 19 articles. The various texts proposed are reproduced side by side in Appendix 5. It has not been possible to reach agreement among the States, members of the United Nations concerning the future of this convention. The question is on the agenda of the eighth session of the General Assembly, meeting in the autumn of 1953.

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Freedom of the Press was guaranteed a hundred years ago by the constitution or the national legislation of many countries. Is this freedom still in danger? Why must the United Nations in the twentieth century take action to safeguard "freedom of information"? In order to find an answer to such questions one has to look into a series of modern developments of a technological and social nature. The Press plays another *rôle* in modern society than it did 100 years ago. The growth of news agencies with a world-wide sphere of action and the development of such media as radio broadcasting and television have changed the picture. Freedom of information in the 20th century is undoubtedly something different from freedom of the Press in the 19th century.

We are not going to study in detail the problems of national legislation and policy created by the recent developments in the information field. Our purpose is to see to what extent and how international agreements might be useful means for solving problems related to the promotion on a world-wide level of freedom of information. In doing so we must take into account the tremendous change in international society which has taken place during the last century. Once freedom of the Press was to be achieved within the boundaries of the various countries. International

implications were few, and there was a tendency to look into the state of affairs of Europe and North America alone, when the "world situation" was examined. Today, media of information spread news and opinions across frontiers and oceans, and the peoples of Asia, Africa and South America play a new and important *rôle* in world affairs. Moreover, international agreements are being used for new purposes and in a novel fashion. Such agreements were in earlier days a means of settling conflicts between national interests, or of dealing with matters where some sort of international co-ordination or co-operation was inevitable, for instance in the field of telecommunication. Conventions were also used for the purpose of making commercial and other arrangements whereby each contracting party receives something in return for obligations undertaken. Some conventions drafted under the auspices of the United Nations are of an entirely different nature. They aim at the promotion of economic and social development all over the world. They strive at achieving a certain universal standard, and are therefore closer to legislation than any agreement of an older and more conventional type. They pre-suppose an interest on the part of the members of the society of nations to assume obligations also where the only compensation received is the hope that social progress in general and better standards of life in larger freedom in all countries will help save succeeding generations from the scourge of war.

It is probable that some of the difficulties involved in the drafting of international conventions in the field of freedom of information arise from the fact that the techniques of legislating within the world community are still, to say the least, in a stage of imperfection. The problems which are met in the field of freedom of information have characteristics of their own; some of them are highly controversial and possibly not typical for the field of international economic and social co-operation as a whole. But still the problems of international legislation concerning freedom of information are closely connected to a series of similar questions in that field, particularly those related to human rights in general. Many observations and conclusions which directly concern freedom of information may, indirectly, be applicable to other projects within "the world community".

Conflicting ideologies

International society, developing into a world community, consists of a number of countries with heterogeneous institutions and customs

and based on different concepts of society and law. Such differences do not make impossible agreements for settling conflicts or regulating problems which cross national boundaries. It is possible, for instance, to make international agreements concerning trade, or exchange of journalists, or for combatting dangerous propaganda, between communist and non-communist countries, between kingdoms and republics, between Christian and Moslem nations. Efforts to lay down a common universal standard with respect to social and legal institutions may, however, be hampered or even made impossible by the lack of a common starting-point. This fact must be taken into account with respect both to the draft Covenants on Human Rights and the draft Convention on Freedom of Information. In the case of the draft Covenants, a long-range project, these difficulties constitute the chief problem meant to be overcome. In the case of the draft Convention on Freedom of Information the fact that it is intended to become effective shortly upon its signature makes it imperative to find out whether and to what extent a common starting-point exists. The efforts to reach results would be helped by acknowledging from the very beginning the fact that the concept of freedom of the Press and of information media in general is one thing in totalitarian States, and entirely another in the rest of the world. It would certainly be an impossible task for instance, to try to bridge the gap between, the Soviet doctrine of the Press and the liberal doctrines prevailing in the non-communist parts of the world.

By making that statement we do not wish to say that no freedom of expression exists in communist countries. The main reason why a common denominator can not be found is the fact that the communist doctrine clearly rejects the idea of information media contributing best to the welfare and progress of society by being let free. In communist countries information media are openly regarded as tools in the hands of those who direct social development and progress. This idea leads back to Lenin and the revolution; large-scale coërcion and organized "persuasion" were the instruments both for the purpose of crushing the resistance of the followers of the old *régime* and for "guiding" the great masses of the population. The Press and other media of information in the Soviet Union must reflect and explain the policies of the Communist Party which determines the goals of Soviet society; they must disseminate views in accordance with its ideas of a useful selection and explain news in the light of its political doctrine.[1] In the USSR the function of the Press

[1] Cp. Alex Inkeles, *Public Opinion in Soviet Russia*, Cambridge (USA) 1950, p. 135 ff. and cited sources. Also Hilding Eek, *Om tryckfriheten*, Uppsala 1942, p. 124 ff.

and other media is settled; there is no freedom for political dissenters, "subversive" elements or, in general, people of another opinion.

This doctrine is nowadays basically conservative; the Press has to help maintain the existing social order as the revolutionary Press helped establish it. In countries subscribing to the liberal line of thought many serious problems exist which relate to the best means of safeguarding and promoting freedom of information, including the problem of preventing information media from developing into instruments for the propagation of the views and the interests of certain groups or classes only. But the recognized purpose of the efforts to solve such problems is to defend the case of the people *versus* the ruler or a ruling class, of the minority *versus* the majority, of the subversive *versus* the obedient. The freedom of those in power was never in danger. The origin of the Western doctrine is revolutionary; in present society it relates to progress and change, criticism and dissent.

There are also non-communist countries which deny the liberal doctrine of Press freedom. That was the case of fascist Italy and Nazi Germany. In Spain a severe system of governmental control including previous censorship is in force, aiming at preventing all criticism of the Franco *régime* or the Catholic Church.[1] In Portugal everyone's right to say what he thinks is in principle recognized. At the same time, the Press is said to "represent the private exercise of a public function". As to the State, the Constitution puts upon it the duty of "protecting public opinion against all factors which might divert from truth, justice, good government and the common weal". Preventive and coercive measures may be taken "against the misleading of public opinion in its role as a social force, and by safeguarding the citizen's moral integrity". This is the explanation of the situation given by the Government of Portugal.[2] Its paternalistic approach to the subject is clearly contrary to the liberal doctrine prevailing in western Europe.

Ideological changes may occur in the future; more stable economic conditions generally lead to a higher degree of individual freedom as contentment at home makes coercion and organized persuasion less necessary. At the present time, however, any reconciliation of the liberal doctrine and the doctrines of the other countries seems out of discussion. In considering particulary the draft Convention on Freedom of Infor-

[1] See Jacques Bourquin, *La liberté de la presse*. Lausanne 1950, p. 112 f.

[2] See "Freedom of Information — A Compilation", *U. N. Publications 1950, XIV. 1, Vol. 1*, p. 13 f.

mation the realistic approach would be to seek a sphere of agreement between countries having a common starting-point.

It must be borne in mind, however, that a common starting-point does not necessarily mean identical concepts with respect to the law governing the Press and other media, and the functions attributed to such media.

We are going to find, in the next chapter that there is a common legal standard with regard to the freedom of the Press in most countries of "the old world", the countries in Latin-America, and the United States of America. Differences exist of course. For instance, American law regarding libel or comments relating to pending trials, is less severe than English law, and it has been said that there exists in the United States a certain tendency of protecting "much discussion which lies well inside the outer barriers within which the Supreme Court has confined government restrictions" and that officials are "sensitive about appearing in the eyes of the public to infringe upon free speech and press even when judicial sanction is probable".[1] Such differences do not arise out of antitheses in ideologies. Nevertheless the efforts to formulate common standards of law in intergovernmental agreements have been hampered by wide divergence in view particularly between the United States, on the one hand, and other countries, notably France, India and Mexico on the other. Apart from the domestic American problem with respect to the relationship between international and national law (see below p. 90), there is in the United States and, to a lesser extent, in Great Britain a certain amount of suspicion towards the safeguards of Press freedom in written-law countries. Many Americans believe that while Press freedom in the United States is "absolute and complete", such freedom does not exist to the same degree in any other country and that in countries where written Press laws exist, the purpose of such laws could not possibly be to safeguard Press freedom. This attitude is likely to create a certain resistance to drafting conventions in the field of freedom of information, as conventions must apply the technique of written law.[2] Moreover, there is a clear difference of opinion with respect to the efforts to devise additional legal standards motivated by recent social and technological developments. Such new standards might restrict the freedom of the editors and proprietors of newspapers, and the American

[1] Zechariah Chafee, Jr., *Government and Mass Communications*, Chicago 1947, p. 37.

[2] Cp. below p. 70 f.

observer is likely to regard them as inimical to freedom. They are regarded as less suspicious by observers from other countries who fear that the privileges accorded to the newspapers by the legal safeguards of the freedom of the Press in their traditional form may, in fact, limit the possibility for the individual members of the community to exercise their fundamental human right to freedom of expression.

There has been a certain tendency to overlook this difference of opinion. In a review of the United States position, given in the *Department of State Bulletin* of 14 November 1949, Mr. Samuel DePalma has however drawn attention to the fact that current national concepts of freedom of information, far from being characterized simply by the gap between the Soviet thesis and "the democratic thesis", are more accurately described as being ranged in a continuous ideological spectrum, bounded by the USSR at one extreme and the United States at the other, with every other country ranged between.[1] Mr. DePalma continues: "Especially significant is the fact that our concept of governmental *laissez-faire* toward the information media does not represent the norm even among most other acknowledged democracies. The danger is that we may be mislead by the opposition of the vast majority of governments to Soviet proposals restricting freedom of information into overlooking the lack of general agreement with our own concept. Many countries share with us the conviction that direct governmental control over the press is inimical to freedom of expression but are nevertheless prepared to make the press 'responsible' by law. Accustomed to domestic press laws, some of which require compulsory correction of various categories of false or 'harmful' reports, they advocate similar measures at the international level. For them governmental intervention is not harmful as such, and the dangers inherent in such intervention are not considered so serious as are the effects of an 'irresponsible' press."

Many democratic countries would possibly not go as far in advocating governmental intervention as indicated by this statement, but would still be anxious to stress the point of a responsible exercise of the privileges given to the Press by constitutions, Common Law, and legislation. The idea that the exercise of the freedom of the Press must be governed by law and that legal control is not the same as arbitrary governmental interference, was stressed by the representative of France during a debate at the thirteenth session of the Economic and Social Council in Geneva

[1] See *Department of State Publication 3687, International Organization and Conference Series III, 43*, p. 17.

14 August 1951, Mr. Jacques Kayser in replying to a remark of the representative of Canada that every qualification of a particular freedom might warrant legislation to restrict its exercise. Mr. Kayser considered, on the contrary, that failure to qualify a particular freedom might give rise to abuses and tend to favour monopolies. He thought it essential to combat monopolies by putting some restrictions on the exercise of particular rights. According to Lacordaire, for the poor as opposed to the rich, freedom was the oppressor and the law the emancipator. Since the Revolution of 1789, France had striven to safeguard freedoms by law. If freedom were neither safeguarded nor protected, it became license and, in the case of freedom of information, such license might lead to grave dangers.[1]

The idea of the law as an emancipator plays an important *rôle* in the thinking also of countries in Asia and Latin-America. Particulary in under-developed countries a desire exists to make the law a weapon in the hands of those who struggle to achieve freedom or effectively to safeguard it.

In spite of such ideological conflicts it should be possible for all countries which accept "the democratic thesis", to reach agreement with respect to essential principles. The problem facing the international lawmaker is in the first place to reconcile the thesis of *laissez-faire* advocated principally by the spokesmen of the Press itself and the traditional Western European concept that Press and information freedom is a fundamental human right and subject to the law, and in the second place to satisfy at the same time to a reasonable degree countries with special needs and problems. It seems that such a compromise can be reached only if in the views of various governments, it would in the long run further the cause of freedom of information throughout the world, and only if its acceptance did not for any existing country lower, or threaten to lower, the standard already achieved. Any effort to reach a solution would of course be meaningless if a considerable number of governments did not approach the subject open to conviction, willing to listen, and ready to admit that no given country is the keeper of the philosopher's stone. There are many cultures in this world with different social and legal concepts, all having their relative merits. To understand and accept this fact is a prerequisite for legislating in the world community, a task which by its very nature is different from dealing with domestic legislative problems.

[1] See *UN doc. E/AC. 7/SR 201,* p. 17.

Other political dissonances

The drafting of a convention on freedom of information has met with difficulties of a political nature apart from those arising out of ideological antitheses or conflicts.

The "Draft Convention on Freedom of Information" proposed by the U.N. Conference on Freedom of Information originated as already stated in a British proposal. The general organization of the draft convention reflects the legal ideas with respect to freedom of the Press, as developed in the unwritten law of England and the written or unwritten law of most other countries. By article 1 of the Convention the contracting States will assume the obligation of safeguarding freedom of information. This obligation on the part of contracting States is limited, however, by an exhaustive list of permissible limitations contained in article 2. It was not the intention of the drafters, nor is it in any way the meaning of the text that all restrictions made permissible should be adopted everywhere or even be made permissible under the laws of the contracting States. Certain concessions to the legal requirements of several countries were, however, necessary in order to make it possible for a greater number of countries to accept as an obligation under international law the fundamental principle of guaranteeing freedom as laid down by article 1.

The meaning and intended function of the draft convention was well understood at the Conference which adopted the draft convention by 31 votes to 6, with 2 abstentions. The 6 opposing votes came from the Soviet bloc; the USSR, Czechoslovakia and Poland have thereafter consistently opposed the draft convention, favouring an alternative Soviet proposal.[1] The two abstentions originated from the delegations of Australia and the United States of America. The reasons given by Australia were that the enumeration of permissible restrictions "did not cover the Australian laws controlling the foreign language press".[2] Later on the Australian government has expressed its concern "lest the enumeration of restrictions which may justly be imposed on the flow of information may be utilized to sanction unnecessary and objectionable limitations on this freedom"[3] – a different approach altogether. The United States delegation gave as a reason for its abstention "domestic differences of interpretation and

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[1] The text proposed by the USSR is contained in *UN doc. A/C 3/L. 254.*

[2] See *UN doc. E/Conf. 6/SR/13*, p. 7.

[3] *UN doc. E/2031/Add. 8.*

legal practice" but declared itself "in full agreement with the intent" of the draft convention.[1]

Since the Conference the United States has changed its attitude from polite abstention into fierce opposition. The United Kingdom, once the main sponsor of the convention, and many countries which voted for it at the Conference, like Belgium, Denmark, the Netherlands, Norway and Sweden, are also opposed to it. Why have so many countries reversed their positions? This question relates in the first instance to the United Kingdom. At the fifth session of the General Assembly the British representative, Lord Macdonald, stated that his government "had received representations from a number of national Press organizations and from one international organization – the Empire Press Union – drawing attention to the dangers inherent in the text adopted during the second part of the third session of the General Assembly. Their purpose was not of course to protect monopolies, but to raise the question how far the United Nations should recognize the right of governments to impose limitations upon the freedom of information. They had stated that the United Nations should not appear to be condoning any such restrictions. The United Kingdom Government agreed with that view and could not sign any convention which was inconsistent with it."[2] The same or similar reasons, however, could have been brought forward against the text proposed by the United Kingdom itself at the Conference. It should be remembered that within the ranks of the British Labour Party the view has been voiced that the performance of the Press does not always reflect a proper sense of responsibility towards society. Labour politicians holding such opinions may not have been moved by the arguments of the Press organizations which caused the Labour government to change its attitude. But they may have felt that it was not worth while, politically, to start a fight with a powerful opposition Press on an issue, not vitally important to the party's main policy in international affairs. Social democratic or labour governments in other countries may have been moved by similar reasons. If this guess is correct the opposition to the draft convention on the part of many governments is mainly the expression of the point of view of the Press in their countries and not necessarily of the people.

There is no doubt that the opposition voiced by spokesmen of the government of the United States is shared by the Press in that country.

[1] *UN doc. E/Conf. 6/SR/13*, p. 3.

[2] *UN doc. A/C/3/SR 321*, p. 309

While the diplomats have politely contended that "this draft convention which was originally intended to enlarge freedom turned out in fact to be an instrument to restrict freedom"[1], the American Press has carried out a violent campaign against the draft convention. *Time* for instance, in an editorial of 19 February 1951, entitled "Another U.N. Trap", stated that "if such a phony freedom treaty ever is signed, foreign politicos will certainly use it with great self-righteousness to throttle U.S. news-gathering abroad". Sometimes it was also argued that the convention, if adopted, would require the United States to restrict Press freedom within its own territory, which indicates a misunderstanding of the draft convention.[2]

On the part of under-developed countries which have expressed themselves in favour of the draft Convention, the view has been voiced that the convention would counteract possible abuse of the various privileges conferred upon news media by the Convention on the International Transmission of News and the Right of Correction. It has also been said that the right of such countries to develop their own media in order to counteract the tremendous impact of the relatively few but powerful news agencies of the big powers should be respected. It is not easy to see how the draft convention on freedom of information, if adopted, would serve the purpose of helping the development of domestic news media in under-developed countries. Mr. DePalma may be right, however, when stating in the above mentioned article that some smaller nations which complain that their policies are misrepresented and their cultures ignored or distorted and which claim that they have no adequate means of redress, may be tempted to employ the next best available remedy, namely restrictive controls of powerful foreign agencies. For that purpose the draft Convention on Freedom of Information might be helpful. If this interpretation is correct we find that behind some of the arguments pro and con the draft convention there is a real conflict of interest: a conflict between the big international news services of the British Empire and the United States, and the governments of some under-developed countries.

The "cold war" is obviously also a check on efforts to reach international agreements in the field of freedom of information. The written and broadcasted word is the main weapon in the "cold" warfare. Making this weapon as effective as possible is not necessarily the same job as laying

[1] See *Press Release, issued on 5 September 1951, by the United States Mission to the United Nations;* statements by Mr. Isador Lubin and Mr. Walter Kotschnig.

[2] See below p. 87 f.

down common legal standards in the field of freedom of information for a peaceful world. In explaining the attitude taken by the United States towards the work of the United Nations in that field, the Brookings institution has made the following statement which might apply to the attitude also of other countries: "The gap between eastern and western views on the question of freedom of information remains wide as ever. How wide this is was illustrated by the report of the United States delegation to the Freedom of Information Conference that the Western nations realized that attempts to compromise with the Soviet bloc were not only useless but extremely dangerous and had to be abandoned. As long as the gap exists, freedom of information will be impossible to extend through international means in the very areas where it is conspicuously absent. The issue of how to extend the principles of freedom exists for the United States as a practical matter only in parts of the world where there is still scope to work for the acceptance of them. In the rest of the world the issue is one of unilateral action or at most collaboration with a few countries by the United States to offset the propaganda at home and abroad of the totalitarian states."[1]

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There is a further question worthy of being mentioned here although outside the scope of this study. The question is whether freedom of expression as a fundamental human right retains its importance in the mind of the 20th century man. Are, to the average publisher, for example, the freedom of information media as commercial enterprises and the freedom to go into that business more important than the right also of the obscure man and the despicable opinion to be heard? Is to a western European labourite the claim for a more "responsible" press based mainly on the desire for less severe criticism of labour policies in leading newspapers, in general owned by conservatives? Is the wish on the part of governments of underdeveloped countries to secure freedom of information and develop information media based on the interest of promoting the various concrete policies of the government, including that of better education, rather than on a real endeavour to guarantee everybody's right to freedom of expression? Those and similar awkward questions have to be pondered. It seems to be a possibility that in our mechanized world, totalitarian or not, most people believe what they are told, and say what they are made

[1] *Major Problems of United States Foreign Policy 1949—1950*, Washington, D. C. 1949, p. 248.

to believe, and that only the very few regard the right to freedom of expression as the most precious of all rights, more precious than economic rights and economic freedoms. If such an assumption were correct centuries of courageous struggle for freedom of thought, opinion, and expression — and its casualties — are already fallen into oblivion. The 20th century man views his environment with fear and incertitude; freedom may not be what this man feels the want of. But in a world where men were taught to adapt their ideas to the technique of the modern age, would they not be released from fear? And the freedoms for which our ancestors fought and died would continue to carry meaning and weight.

Chapter II

Legal Standards Concerning Freedom of Information

The existing legal standards relating to freedom of the Press were established as the result of a struggle for freedom, carried out through centuries since the invention of the printing press suddenly made it possible to communicate simultaneously with a large number of people. Freedom of expression was, in early days, far from regarded as a human right. Speaking of the situation in England at the beginning of modern times, Clyde states that the right to put his thought in print before the public was certainly not "part of the Englishman's birthright" and any demand for Press freedom would have appeared as "a dangerous and undesirable claim for anyone to make".[1]

At the end of the nineteenth century, however, the principles of Press freedom had been accepted nearly all over the world. The most noticeable exceptions were China, Japan, Russia and Turkey. In England the Licensing Act of 1662 expired in 1695, and was not renewed. The Act, however, was for long regarded as declarative of Common Law, and Press freedom was achieved only at the end of the eighteenth century when new concepts were established as the result of a series of judicial decisions. In France the Declaration of the Rights of Man of 1789 formed the basic document for the propagation of human rights and fundamental freedoms including freedom of the Press; it was about 100 years after the revolution, however, before the application of the ideas of Press freedom were fully secured in France, namely by the Press Act of 29 July 1881. In Sweden Press freedom was established after the revolution in 1809 under a new constitution. In Norway, a few years later, Press freedom followed the separation from Denmark. In the eventful years of 1830 and 1848 many peoples of Europe rose in rebellion against oppressive regimes or otherwise achieved constitutional changes which secured fundamental freedoms. In Belgium, Press freedom was based on the Constitution of 1831. 1848 was the critical year for Germany and Austria, Denmark and

[1] William M. Clyde, *The Struggle for the Freedom of the Press from Caxton to Cromwell*, London 1934, p. 9.

the Netherlands, Italy and Switzerland. Later in the century followed Bulgaria, Greece, Rumania and Serbia. At the end of the century censorship was out of function also in Portugal and Spain and in a series of countries in Latin-America where liberal constitutions and Press acts were introduced. In the United States, Press freedom was safeguarded by the various Declarations of Rights, by the First Amendment to the United States Constitution, adopted in 1791, by the Fourteenth Amendment, adopted in 1868, and by the constitutions of nearly all of the States. This trend continued at least until the end of the First World War when newly created States or liberated countries introduced democratic constitutions and institutions. But fascism and nazism did not accept the liberal ideas of Press freedom, nor does communism. While after the Second World War Press freedom was established and confirmed in many countries in Europe and Asia, it can not be denied that a trend towards control and oppression exists not only in countries like Spain or Argentina, and in communist countries but also in other parts of the world. Moreover, a complication has occurred; it has been argued that the traditional legal standards, established to safeguard Press freedom, do not adequately protect that freedom in view of modern developments in the field of information. The concept of Press freedom, significantly relabeled "freedom of information", is more controversial today than fifty years ago.

A. THE TRADITIONAL LEGAL STANDARDS. FREEDOM OF THE PRESS

As the important result of the struggle for freedom of the Press, it was made possible in large parts of the world to express opinions without fear, even where the opinions expressed were critical of the established order of society or attacked the actual political, social or religious leaders. The legal concepts, expressing and defining this freedom do, however, not always follow exactly the same patern. In trying to formulate the legal standard which may be regarded as more or less universal it seems practical to deal separately with the situation in (i) England; (ii) continental Europe; and (iii) the United States of America. It can be assumed that the system of Press Law in the various countries in the world where Press freedom exists follow the general trend of one of an-

other of these three systems.[1] They are rather similar. Their common feature is the prohibition of government censorship[2] previous to publication. This is explained by the fact that the struggle for freedom of the Press was, first of all, a struggle against censorship. Freedom of the Press is, historically, freedom from previous censorship.

Press censorship was introduced in the fifteenth century by the Catholic Church and was later on applied by the kings or parliaments all over the world. Its common feature was the legal requirement of an *imprimatur*, or a "license", of the censor previous to any publication of printed matter. It gradually lost its effectiveness partly because of the extensive use of false *imprimaturs*, illegal printing shops, the smuggling of forbidden literature across national borders etc., partly due to the ridicule to which it lent itself. In "Areopagitica" Milton exposed its shortcomings; in order to become efficient it must find means of supervising the lutes, guitars and violins, he wrote, "They must not be suffer'd to prattle as they doe, but must be licenc'd what they say." "And who shall silence all the airs and madrigalls, that whisper softness in chambers?" The growth of the newspapers made it increasingly difficult to apply previous censorship and where severely applied it overstepped all reasonable limits. In Turkey, under Abd-ul-Hamid, for example, newspapers were forbidden to use unpleasant words like "constitution", "dynamite", and "bombe", even in the sense of ice-cream. In our days, previous censorship has been applied in some countries in war time, but governments

[1] There is, for instance, a clear similarity between the constitutional provisions of countries of continental Europe and those of countries in Latin-America. As an example may be quoted the first paragraph of article 7 of the Constitution of Mexico of 5 February 1917: "Freedom to write and publish articles is inviolable. No law or authority may establish a previous censorship, or exact a bond from the authors or printers, or restrict the freedom of the press, which has no further limits than respect for private life, morals, and public peace. In no case may the printing press be sequestered as an instrument of the crime." Another example is article 28 of the Constitution of Uruguay of 18 May 1934: "The communication of thought by word, written privately, if published in the press, or by any other method, without necessity of previous censorship, is entirely free; authors and, as the case may be, printers or distributors, remaining liable, according to law, for abuses that may be committed."

[2] By "censorship" we understand in the present study censorship applied by the government previous to publication. In other words, we do not include, for instance, "censorship" carried out by newspaper owners or publishers, or government censorship, applied after publication. Much confusion occurs by the use of the term censorship in relation to *post-facto*-interference by governments.

have generally found that a system of "voluntary restraint" on the part of the newspapers is more effective than continuous supervision. The danger arises from the fact that governments having constitutional or statutory powers of imposing censorship, may direct the Press as effectively and extensively by the *threat* of censorship as by actual day-to-day measures of proofreading, approval and rejection.

England

The principle of freedom from censorship was expressed as follows by Lord Mansfield in the case Rex v. Dean of St. Asaph of 1784: "The liberty of the Press consists in printing without any previous licence, subject to the consequences of the law." The consequences of the law consist in the risk of being found guilty either in criminal proceedings or in a civil action. Since Fox's Libel Act of 1792, "it must be left to the jurors in criminal libel prosecutions to return a verdict on the general issue — they were to be the judges of whether the words charged were libelous as well as of the bare fact of publication by the accused".[1] In the words of Lord Chief Justice Kenyon in the case Rex v. Cuthell[2] this means that "a man may publish anything which twelve of his countrymen think is not blameable but he ought to be punished if he publishes that which is blameable".

An extensive series of English court decisions define the limits of the freedom of expression with regard to the Press. Possible offenses relate to defamation, blasphemy, seditious or obscene libel and contraventions against certain statutes designed to protect the armed forces and the police against attempts to seduce them from their duties. There are also certain other concepts of Common Law to take into account like contempt of court.

It should be borne in mind where English law is concerned that there are in the English system of law no specific privileges accorded to the Press. The liberty of the Press, of a newspaper or other organs of publicity, is the same as the liberty of any individual. The law which affects the author, publisher or printer in the pursuit of his daily occupation is part of the ordinary law of England. The freedom enjoyed by the Press is, as stated by Dawson, a result partly of the absence of special restrictions. But, at the same time, it is principally "due to the tradition, which

[1] Thomas Dawson, *Law of the Press*, London 1947, p. 3.

[2] *R. v. Cuthell*, (1799) 27 How. St. Tr., p. 675.

has become firmly established only within the last hundred years, whereby the utmost tolerance is accorded by public opinion to all publications so long as they do not tend to endanger the State, outrage morality, or unjustifiably cause injury to individuals".[1]

Continental Europe

Press freedom not only in France but in many other European countries goes back to the famous article 11 of the French Declaration of Rights of 1789, reading as follows: "The unrestrained communication of thoughts or opinions being one of the most precious rights of man, every citizen may speak, write, and publish freely, provided he be responsible for the abuse of this liberty in the cases determined by law." While in France the fundamental principles of Press freedom are defined in the Press Act[2], most European countries have included in their constitutions provisions which define Press freedom or, in most cases, at least outlaw all previous restraints and particularly censorship. Some constitutions mention besides censorship other preventive measures which have during history been shown to be equally detrimental to Press freedom. The Austrian Basic Constitutional Law on the General Rights of the Citizen of 1867 mentions besides censorship "any license system"; the Belgian constitution of 1831 provides that "no caution money shall be exacted of writers, publishers, or printers"; the Danish Constitution of 1915 forbids "censorship and other preventive measures"; the Greek Constitution of 1911 provides that "censorship and every other preventive measure", including "the seizure of newspapers and other printed treatises" are prohibited. The list of similar provisions can be extended.[3]

The bearing of a constitutional guarantee depends on the constitutional system in each country. Of particular importance is the role played by the courts under various constitutional systems, including the

[1] Dawson, *op. cit.* p. 1.

[2] The Declaration of Rights was, however, referred to in previous constitutions and reaffirmed in the actual Constitution of 27 October 1946.

[3] During the discussion of censorship at the UN Conference on Freedom of Information 1948 a representative of the United States (Mr. Chafee) stated that 28 countries of the world guaranteed total abolition of censorship in their constitutions, 12 others affirmed in their constitutions that censorship be abolished, and in 8 others without a written constitution, freedom from censorship had in practice become a reality. In only 8 countries was censorship allowed under the constitution. See *UN doc. E/CONF. 6/C. 4/SR/9* p. 3. Cp. below p. 101 ff.

possibilities of review of the constitutionality of legislative and/or administrative measures. Where such review does not occur, the courts may still function as a guarantee of the freedom of the Press, as constitutional or legislative provisions may prescribe that the judicial authority alone can impose restrictions. According to the law of all or nearly all countries only the courts have the right to impose penalties.

The existence of a rule of law as outlined above may be described as a second common feature of the Press Law of Continental Europe.

The third common feature is the existence of specific Press Acts. On the basis of the constitutional provisions, the Press Acts regulate in detail matters relating to the Press. One of their main objects is strictly to define cases of abuse by means of an exhaustive list and a rigid definition of Press offences. Here, the written law establishes the safeguard which in England (as well as in the United States) is constituted by the courts of law.

The lists of restrictions vary from country to country. While the system excludes the possibility of arbitrary punishment, if correctly applied, Press freedom may, of course, be seriously hampered where the list of press offenses is extensive or punishments severe. It might be said, however, that excessive punishments are generally not applied in countries where the Penal Law, in general, has arrived at a civilized standard. As to the list of Press offenses, there is a definite tendency to restrict offenses along the same lines as indicated by the English judicial decisions. As an example the list, included in article 4 of chapter 7 of the Swedish Press Act of 1949 may be quoted. It reads as follows:

"Having due regard for the purpose of freedom of the Press as stated in chapter I, the following utterances in print are forbidden when punishable by law:

(1) high treason, committed with the intention of making the Kingdom, by violence or other unlawful means or with outside assistance, subject to a foreign Power or dependent upon such Power, or of thus detaching a part of the Kingdom or of enforcing or obstructing with outside assistance actions or decisions of the Crown, the Riksdag or the supreme judicial authority, provided that the act involves a danger that the intention may be carried out;

an attempt or preparation with a view to such high treason;

(2) insurrection, committed with the intention of overthrowing the Government by armed force or other violent means of thus enforcing or obstructing actions of decisions of the Crown, the Riksdag or supreme judicial authority, provided that the act involves a danger that the intention may be carried out;

an attempt or preparation with a view to such insurrection;

(3) war treason, whereby, when the Kingdom is at war or statutory provisions respecting war treason are otherwise in force, a person induces members of the armed forces of the Kingdom or of a State allied with the Kingdom to become discouraged or mutinous or by false statements spreads such despair among the people that the national defense may be considerably hampered or commits some similar treasonable act which is of considerable detriment to the national defense or to resistance activities within an occupied part of the Kingdom;

an attempt or preparation with a view to such war treason;

(4) an act of the nature specified under (3) when committed as the result of negligence;

(5) libel or other defamatory act against the King or other member of the royal family, affront to a government administration acting in place of the King or to the Riksdag, its departments or committees or to the flag or shield of Sweden or any other symbol of Swedish sovereignty;

(6) libel or other defamatory act against a person who holds or has held an official position or other office to which official responsibility attaches or a person who by order of the Crown enjoys protection as an official, provided that the defamation is committed with respect to his office;

(7) affront to the flag or shield of a foreign Power or to any other symbol of its sovereignty or libel or other defamatory act against the head or representative of a foreign Power here in the Kingdom;

(8) incitement to criminal acts, neglect of civic duties or disobedience to authority;

(9) dissemination of false rumours or other false statements with the intention of endangering the security of the Kingdom public welfare or public order and security or of undermining respect for authority or other bodies with the right of decision in public matters;

(10) threats, calumnies or libel against groups of people because of their origin or religion;

(11) the insulting of anything held sacred by the Church or a recognized religion;

(12) actions offensive to decency;

(13) defamation of a private person by accusing him of criminal or other acts detrimental to his honour, good name and reputation as a citizen and to his occupation, trade or advancement, or by libelous utterances or other defamatory act."

This list included in an Act which forms part of the Constitution, is relevant only when the types of utterances listed are "punishable by law". This means that they must be included in the Penal Code; if not so included, restrictions can not be applied. If the Penal Code should provide for penalties in the case of oral utterances others than those included in the list, such provisions of the Penal Code could not be ap-

plied to the Press. A list of this length may *appear* as providing for serious restrictions of Press freedom. It shold be taken into account, however, that the list belongs to a system of law in which any previous restraints are prohibited and where restrictions take the form only of penalties, imposed by a regular court after a fair trial and in accordance with the general principles of Penal Law.

The Press Acts generally also include a series of provisions concerning, amongst other things, formalities with regard to the establishment of printing shops or newspapers, the right of anonymity, or the system of liability. In some countries there are also provisions for the right of reply or of correction; this right is construed as a safeguard of every-man's freedom but creates, at the same time, a liability on the part of the newspapers which may under the Press Act be compelled to insert replies or corrections.

United States of America

The system of the United States differs from that of England as Press freedom in the United States has as its basis provisions in a written constitution. On the other hand, the American system is similar to that of England as it is left to the courts to define Press freedom and its restrictions.

The terms of the American constitutional provisions are less precise than corresponding provisions found in most European constitutions. According to the First Amendment (1791) "no law shall be passed to restrain or abridge the liberty of speech or of the Press". The Fourteenth Amendment (1868) which applies to interference by the constituent States is also drafted in broad terms. Moreover, the First Amendment applies only to the federal government. For this reason, the process of establishing a legal standard safeguarding freedom of the Press all over the United States constituted, as pointed out by Lasswell[1], a rather slow process. For over a hundred and thirty years state governments and local officials could interfere with freedom of communication without having their acts subjected to review by the United States Supreme Court as violative of the Federal Constitution. It was not until 1925 that the Fourteenth Amendment was applied to state interference with freedom of speech. In 1931 and 1936 freedom of the Press was added.

[1] Harold D. Lasswell, *National Security and Individual Freedom*, New York 1950, p. 64.

It is natural in view of historical developments and the constitutional structure of the United States that the American courts in their decisions have explained Press freedom by indicating what restrictions are constitutionally not permissible rather than by defining positively the concept of freedom. As a result it is less clear in American than in European law that previous restraints like censorship are in no case permissive. It has been said that the main purpose of the First Amendment was to prevent all such previous restraints upon publications as had been practiced by other governments.[1] But it has also been stated that this position "is not law".[2] At the same time it seems generally agreed that any restraint prior to publication is an unconstitutional invasion of the freedom of the Press.[3] In Near v. Minnesota[4] the Supreme Court held unconstitutional a Minnesota statute providing for the suppression of any malicious, scandalous or defamatory newspaper.[5] According to Chafee censorship of offending material before publication or while publication is under way can not be validly used in peace time.[6] Licensing of newspapers has not been attempted in the United States. The method of excessive taxes as a means of restricting the Press was held unconstitutional by the Supreme Court in the Grosjean case.[7] Some previous restraints which are unconstitutional according to the law of some European countries may however be applied in the United States, e.g. seizure of offending material by the Customs Service or the Post Office, or discrimination and denial in the use of communications facilities for distribution.[8] As a whole, however, the restrictions permissible according to the law of the United States seem to refer mainly to post publication penalties or damages for objectionable publication.[9]

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[1] Cp. The Constitution of the United States (Annotated). *Senate doc. No. 232. 74th Congress, Second session.* Washington 1938 p. 597.

[2] Henry Rottshaeffer, *Handbook of American Constitutional Law.* St. Paul 1939, p. 758.

[3] Ibid.

[4] *Near v. Minnesota,* 283 US 697 (1931).

[5] See also *Lovell v. Griffin,* 303 US 444 (1938).

[6] Zechariah Chafee, Jr., *Government and Mass Communications,* Chicago, 1947, p. 63.

[7] *Grosjean v. American Press Co.,* 297 US 233 (1936).

[8] See Chafee, *op. cit.* p. 62 ff, and 276 ff.

[9] The following definition of the freedom of the Press is given by Robert W. Jones in *The Law of Journalism,* Washington, D. C., 1940, p. 1.:

"Freedom of the press is the right to publish, without official pre-view or censorship, and without official instructions, anything the editor and proprietor of a

Restrictions on freedom of the Press not held to be unconstitutional fall, according to a communication from the United States government to the United Nations[1], into four general categories:

1. Protection of individuals against libel;
2. Protection of the community against the dissemination of obscenity.
3. Protection of the State against internal disorder; and
4. Protection of the State against external aggression.

The boundary line between freedom and restriction has been described by the Supreme Court in these words: "The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent. It is a question of proximity and degree."[2]

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In summing up it may be said that there exists a common legal standard with regard to the freedom of the Press which includes the following principles:

(a) The prohibition of government interference with the Press in the form of censorship and similar previous restraints;
(b) The principle that any restrictions on Press freedom must be applied or subject to review by the courts, and that the courts alone have the right of imposing penalties.

It seems justifiable not to include principles which exist only in a limited number of countries, for instance the establishment of a right of reply, principles relating to "the freedom of distribution", provisions for trial by jury, or the various legal principles relating to the right of anonymity and systems of liability. The idea of permissible restrictions does not constitute a principle of its own. The restrictions are in fact implied by the definition of freedom, which in all legal systems, whether based on written or judge-made law, includes the idea that in the exercise of his rights and freedoms everyone must respect the rights and freedoms of others.

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newspaper, periodical or magazine may decide to publish, subject, however, to the penalties imposed by law for the publication of libel, contempt of court, sedition, obscenity, blasphemy or other non-mailable matter."

[1] "Freedom of Information. A Compilation", *U. N. Publication 1950, XIV. 1, Vol. I*, p. 22.

[2] *Schenck v. United States*, 249 U. S. 47 (1919).

B. MODERN DEVELOPMENTS AND NEW STANDARDS

When dealing with modern developments and the demand for new or additional legal standards, it must be borne in mind that freedom of the Press and freedom of information are social concepts. In the democracies the people have chosen the principle of freedom and protected it by their constitutions and their written or unwritten law. This choice was made because the principle of freedom was regarded as a principle of basic importance in human society. There must be freedom of opinion for everyone because in a democracy everybody as a citizen carries responsibility for the community and the management of its affairs. There must be free criticism in order to counteract abuse or mismanagement on the part of those in power: the government, the administration, the legislature. New ideas must be brought forward to promote progress and change. It is equally important and possibly more so in modern society, that everybody has a chance of listening to and otherwise receiving a variety of opinions which may help him to select his own. Moreover, everybody should receive an abundant flow of news, he should be told what is going on in his own country as well as in other countries and thus be able actively to take part in the life of the community or communities to which he belongs.

When modern developments with respect to media of information are debated and new legal standards suggested, the main argument, within democratic countries, is that the "old" standards do not any longer, in view of modern developments, really safeguard everybody's right of expression and provide for the desired variety in publicly expressed opinions and the abundant flow of information which should make it possible for the citizen to get at all facts. If the law does not any longer constitute a real safeguard of the right of everyone to let his opinions be heard, and does not provide for a multiplicity of views and news to be disseminated, that system must be reconsidered and possibly revised. Freedom must be "re-defined". Speaking of the political life in the United States, William O. Douglas, Associate Justice of the United States Supreme Court, has arrived at a similar conclusion: "The times demand a renaissance in freedom of thought and freedom of expression, a renaissance that will end the orthodoxy that threatens to devitalize us."[1]

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[1] William O. Douglas, The Black Silence of Fear. *New York Times Magazine* 13 January, 1952.

The new developments we are going to outline relate to (i) society in general; (ii) the Press; and (iii) new media of information. These developments and the problems they have created have been the object of investigation and research in several countries. We do not regard as our task to discuss them or even list them in any detail. To find solutions of these problems is the task of the legislators in countries where they are deemed urgent and serious. From the point of view of international legislation the most important thing is to bear in mind that many countries may wish to reserve a certain freedom in dealing with matters like monopolism in the field of information media or the need for developing domestic news media. Any effort to arrive at a universal protection of freedom of information must also take into account the fact that the traditional legal standards concerning the freedom of the Press do not apply without modification to new media of information.

Society in General

Some of the relevant new developments within society in general relate to media of information although not caused by them. Nowadays the life of most individuals follows a strictly organized pattern of work and free time, leaving little possibility of communicating directly with other individuals and to receive information except by means of mass media. The framework of life grows increasingly complicated. The individual needs information of many kinds in order continuously to train himself for his work and earn his living. Technological developments aiming at raising the living-standard in general and increasing the result of human labour also require the attention of individuals compelled to live in modern society; they need the help of mass media. Educational developments are followed by new demands for literature and other reading material. Newspapers, films and radio are in our days needed as much as water and electricity, and in developed countries, as claimed by the modern branch of science, called "communications research", the average adult man or woman spends about a fifth of the waking hours listening to, reading or viewing communication media.

In underdeveloped countries the establishment of domestic news media is regarded as urgently needed to support efforts towards industrialization and progress in general. While in developed countries the growth of news media was a relatively slow process, linked to economic and cultural development in general, new countries are faced with a problem

of speeding up the tempo by subsidizing news media, which means governmental intervention.

A specific problem relates to information from government sources. In earlier days it was sometimes extremely difficult to get at the sources of information. Nowadays not only technological advances but also the existing network of news agencies and other news collecting services supply most of the information needed for dissemination to the public. Information from governments and government agencies is vitally important, but subject to restrictions. The fact that in modern society the organs of or the government in all countries engage in a constantly increasing number of activities and has taken on new responsibilities has created a barrier to the free flow of information. What governments do is important to the citizen; not only his activities as a citizen need to be based on full knowledge of public affairs but also his private dispositions depend on such knowledge. If we knew nothing concerning decisions taken or contemplated by the government, the administration and the legislature, if our access to the documents which picture their activities were entirely barred, freedom of information would certainly be defective!

In one country, Sweden, it has been laid down in the Constitution as a fundamental right of the citizen to have access to all documents in the administrative offices. There are exceptions but only such as envisaged by the constitution itself and listed exhaustively in a statute, adopted by the Parliament. An officer of the Crown or of a municipality who unlawfully refuses to give access to a document may be subject to prosecution.[1] This is an exceptional institution explained by political controversies in eighteenth century Sweden. In most countries, the relevant principle of public law is the reverse. Documents of the various agencies are regarded as the property of the agency and will be shown to the public only if it pleases the agency. This is a Common Law doctrine. In the United States this doctrine denies any general right of inspection of records of executive departments of government. In the absence of an act of Congress, the availability of federal records is "a matter of official grace or indulgence or 'discretion' ".[2] There are of course in all countries exceptions, relating for instance to the courts or the interests of certain individuals in certain cases, but the principle is that of prohibition. In England, for example,

[1] Cp. Nils Herlitz, *Sweden. A Modern Democracy on Ancient Foundation,* Minneapolis 1939, p. 63.

[2] See *Editor and Publisher,* 17 November 1951.

all reports of parliamentary proceedings are, theoretically, prohibited and their publication is technically a breach of privilege; the existing freedom of parliamentary reporting is an exception from the rule.[1] In the United States the existing system of "classifying" material as secret has as its legal authority besides the Common Law as stated above, a general statute dealing with administrative management. It authorizes the head of each department "to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it".[2]

The dangers involved in an elaborate system of secrecy with regard to governmental and related activities, have been stressed recently from many quarters and in many countries.[3] One of the topical problems of freedom of information which meet legislators in the various countries is how to reconcile the need for protecting adequately national security and the upholding of freedom of information.

The Press

We are going to deal with some modern developments in the field of the Press and some of the measures, including new legal standards, suggested in order to remedy existing evils. It would certainly not be possible to establish an exhaustive list of problems involved; they take different forms and are looked upon differently in the various countries of the world. It seems practicable, however, to deal with them under the following main headings: *industrialism; professionalism; monopolism;* and *the performance of the Press.*

These problems have been widely observed and the subject of study in many countries. In post-war France serious efforts were made to formulate new legal concepts. A Draft Act regulating the Press, embodying such concepts, was submitted to the French National Assembly in 1947

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[1] Dawson, *op. cit.* p. 104 f.

[2] See Walter Gellhorn, *Security, Loyalty, and Science.* Ithaca 1950, p. 27 ff.

[3] In the United States, an executive order of the President of 26 September 1951, providing for "uniform standards for classifying and protecting security information throughout the executive branch of the government", was described in *Editor and Publisher* (29 September 1951) as amounting to "the most drastic peacetime censorship ever attempted in this country".

but has not become law.[1] In the United Kingdom, the Royal Commission on the Press was established in 1947 "to inquire into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon".[2] In the United States of America, "The Commission on Freedom of the Press", financed by private means, has published a "General Report on Mass Communication"[3] and a series of special studies relating to the Press, the radio and the movies. Similar problems have been studied in other countries, like the Netherlands, Switzerland[4] [5], and Czechoslovakia where highly interesting legislative developments were interrupted by the *coup d'état* in the spring of 1948. New legislation in other countries, e.g. Afghanistan, Colombia, India, Italy, Norway and Sweden, also throw light on the topical problems in the field. At the same time a series of studies have been initiated and carried out by the Secretariat of the United Nations and by UNESCO, dealing with many important and urgent problems in the field of mass communication. Further studies have been initiated by "The International Press Institute" in Zürich which was established in 1951 by Press enterprises or organizations in several countries. There is, obviously, a need for co-ordinating the various studies made and for evaluating their results in a spirit of objectivity and with understanding of the fact that the problems involved have different aspects in different countries.

Industrialism.

Industrialism in the field of the Press is the result of the technological revolution of the last century. The Press, good or bad, government controlled or free from government interference, is today a big industry in every country of the world where industrial development has taken place. Liberal press laws, which purport to guarantee free expression, have given to this industry a privileged position which is not shared by industrial enterprises in any other field.

Freedom of the press when first tasted was the freedom of the political pamphlet, the freedom of inflaming messages sent from one sophisticated

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[1] See *Freedom of Information*, Vol. II p. 45 ff.

[2] See *Royal Commission on the Press 1947—1949. Report Cmd. 7700* London 1949.

[3] *A Free and Responsible Press.* Chicago 1947.

[4] See Jacques Bourquin, *La Liberté de la Presse*, Lausanne 1950, p. 539 ff.

[5] K. F. Zieris, *The new Organization of the Czech Press.* Prague 1947.

brain to others. It was freedom of thought expressed by means of the dissemination of hand-printed sheets; freedom of spreading the words of Rousseau and Montesquieu, Alexander Herzen and Oscar Wilde. Today freedom of the press is identified to most people with the freedom of the newspapers. Many of them are very large industrial enterprises; if they operate on a more modest level, they are still commercial enterprises which require considerable capital. It can not be denied that in our days only a few people are in the situation of making use of the freedom to start a newspaper without governmental license. This freedom has for the average citizen, an English writer states, "as little meaning as the right of a worker in a Sheffield factory to start a steelworks in competition with a steel combine".[1] Yet nobody wants to turn back to the days when newspapers were not available at the doorstep in the morning. The products of the newspaper industry are as urgently needed as the mass products of the steelworks.

Therefore, while the dangers to freedom inherent in contemporary developments like monopolism and concentration of ownership should not be overlooked, it is important also to study the effects of industrialism with regard to the freedom of action of the newspaper enterprise itself, regarded as the producer of an indispensable commodity in modern society. The newspaper business is extremely vulnerable. The newspaper has to be produced every day at the same time and in the same form in order to retain its customers; this is equally true where the main income of any given newspaper springs not from sales but from advertising. The vulnerability of the newspaper business has been shown in connection with the shortage of vital facilities. During the war the shortage of newsprint and printing machinery caused serious trouble to newspapers in many countries. In some countries arrangements were made, however, between the government and the newspaper industry in order to provide for a fair distribution of newsprint. At the present time and presumably for many years to come the shortage of newsprint continues to threaten the life and success of newspapers nearly all over the world. The need for rationing paper may lead to a certain government control; this control might be used for discriminatory measures against newspapers which are not favourable to the *régime*. Such measures taken in Argentina, for instance, caused the Economic and Social Council of the United Nations to adopt on 9 August 1950 a resolution inviting member States concerned to put an end to confiscatory measures and discriminatory actions as

[1] Kingsley Martin, *The Press the Public Wants*. London 1947, p. 140.

being contrary to freedom of the Press. Government interference in the sale and purchase of newsprint may also be caused by shortage of hard currency. A prolonged crisis with regard to newsprint may necessitate the elaboration of additional legal standards, aiming at safeguarding freedom of the Press against such discrimination and pressure originating in the shortage of newsprint as may be exercised by governments or by producers or consumers in a favourable position.

As a big industrial enterprise, the newspaper is also faced with important labour problems. It has been argued that labour conflicts within the newspaper industry threaten Press freedom. Such conflicts might be initiated in order to influence the editorial policy of a paper. As an example of possible remedies may be mentioned recent agreements between employers and workers in the newspaper field in Sweden. They have agreed by collective bargaining not to use the strike or lockout in the case of disputes concerning the terms of future collective agreements, but to settle such disputes, if necessary, by obligatory arbitration.

Other pressure groups within society may also try to influence the editorial policy of newspapers, for instance by boycott action against their distribution. If such pressure groups have the support of the government or of dominant political parties serious difficulties may meet newspapers representing a minority opinion. This is the reason why, in some countries, specific emphasis is put on "the freedom of distribution"; additional legal standards have been sought aiming at protecting the freedom of distribution not only against governmental interference but also against interference from private pressure groups. This legal problem is complicated, however. Freedom of the Press should not be protected by violating trade union rights, and the consumer has undoubtedly a right both not to consume and to organize with other consumers in order to protect his interests. Sometimes, pressure exercised by the readers or the audience has shown the only or the most effective method of making a newspaper or a broadcasting station improve its performance.

Professionalism.

Professionalism or professionalization is another feature of the modern Press. At one stage the printer, the publisher, the editor and the journalist was the same man, and his qualifications were often those of an *homme de lettres*. Today the newspaper as a business enterprise hires a staff of journalists; the performance of the Press is to a large extent the result of the professional work of professional men and women. The

journalistic profession like others has its merits and its faults. It has been said many times that if the newspapers were run by the journalists and not by the owners and their representatives the performance of the Press would be better. It has also been argued that freedom of the Press means not only the proprietor's right to print news and comment freely and critically and the right of the public to receive a steady and honest supply of information, but also the right of the individual journalist to tell the public what he knows.[1] Emphasis has continuously been put on the importance of codes of ethics and courts of honour for the journalistic profession, summarizing and implementing the creed of the profession. In order to maintain high standards the profession needs, it has been claimed, special protection. By law or by collective bargaining, a system of social security should be established making it less dangerous for the individual journalist to resist pressure, particularly from the proprietor, aiming at making him deviate from his duties as outlined by existing codes of ethics. Such measures have sometimes taken the form of giving the journalist an official status similar to that of a physician or an attorney. Sometimes emphasis is put on the need for better training. The study of some of these problems was included in the terms of reference of the "General Council of the Press" proposed by the British "Royal Commission on the Press".

While it is important that journalists receive proper training and enjoy social security, it is not proved that journalists necessarily would serve the public better than publishers or proprietors do at present. The establishment and encouragement of a privileged class of citizens, exercising to a definitely higher extent than others freedom of expression by means of the Press, might be a poor way out of the dilemma created by the industrialization of the Press.

Monopolism.

When monopolism in the field of the Press is dealt with attention must be drawn to a series of facts or tendencies. It is a fact that only a few individuals can exercise the freedom of starting a newspaper. This right is monopolized by the very rich. Yet, this does not necessarily mean that freedom of expression has developed into a monopoly, nor that the right of the public to recieve a steady and honest supply of information is in danger. The danger is present only when the newspapers in a given coun-

[1] See Kingsley Martin, *op. cit.*, p. 104.

try do prevent the expression of all views or all significant views and do select for discriminatory purposes of their own the news disseminated to the public. Studies of the performance of the Press, a problem dealt with below, have been referred to as evidence of such practices. Monopolism itself has been investigated, and investigations show a tendency in many countries towards concentration of ownership in the field of news media and a decrease of the numbers of competing newspapers. The mere danger of abuse of monopolistic powers has brought about the discussion of appropriate remedies and, in some instances, lead to legislative measures. In a communication to the United Nations the French government has explained the situation as follows: "Freedom of ideas and information must be safeguarded not merely against government attacks or pressure, but also against the distortions of those who, possessing economic power, may seek to monopolize all media of information for the protection of private interests. The industrialization of these media, even the immense material resources they now require, present from this point of view a certain danger."[1]

Various types of remedies have been suggested. The difficulty relates to the compatibility of measures which might remedy the dangers seen in industrialization and monopolistic tendencies, with the principle of freedom of expression by means of the Press. It might not be difficult, technically, to establish a system of governmental control which would make private monopolies impossible, counteract the tendency towards concentration of ownership and investigate any possible abuse of the power of those who direct newspapers. Most students of these problems reject, however, any system of governmental control as a proper remedy; even if a system of governmental control did not include rights of censoring or licensing newspapers but mere supervision, advising and so on, such governmental powers might be abused and freedom gravely circumscribed.

A relatively modest remedy already adopted in some legislation and discussed in many countries consists of the demand for publicity with respect to the ownership and financing of newspapers. The need for publicity has been observed particularly in connexion with efforts to influence the stock market by means of false or tendentious news, veiled paid-for advertisements, economic subsidies from abroad and so on. The rule of publicity seems, however, to be important with regard to all dangers or evils seen in the development of the press enterprises into big

[1] See *Freedom of Information*, Vol. I, p. 8.

business. It should be recalled that the British "Royal Commission on the Press"[1] recommended that where one company, either directly or through subsidiaries, owned daily newspapers in more than two towns, all the newspapers so owned by that company should be required by law to carry on the front page a formula clearly indicating their common ownership. The Commission also suggested provisions for securing the disclosure of the identity of the persons in control of newspaper undertakings.[2]

The most effective method of combatting monopolism is, of course, to provide by anti-trust laws or other legislation for the splitting-up of enterprises which by their existence and development make competition impossible in a certain field. The American "Commission on Freedom of the Press" although believing that there should be active competition in the communications industry, did not recommend, however, that the antitrust laws be used to force the breaking-up of large units within that industry. These laws were, according to the Commission, extremely vague and could be very dangerous to the freedom and the effectiveness of the Press, for instance by being used to limit voices in opposition and to hinder the processes of public education.[3] It suggested, however, that such laws be invoked to maintain competition among large units and to prevent the exclusion of any unit from facilities which ought to be open to all. We are here faced with the public utility concept. This concept plays an important *rôle* in American legal thinking. While newspapers or news agencies are not, according to American judicial decisions regarded as public utilities comparable to railroads or telephone companies[4], a series of decisions exist where the public utility concept has been given more serious consideration.[5] This trend of reasoning is important; the public utility concept would interfere with the freedom of monopolies in so far as newspapers and news agencies might be regarded as having a duty to give publicity to advertisements and access to news without discrimination but it would not interfere with the organization and ownership of the enterprises.

[1] See its *Report* p. 163 f.

[2] *Ibid.*

[3] *A Free and Responsible Press*, p. 85.

[4] See Frank Hughes, *Prejudice and Press. A Restatement of the Principle of Freedom of the Press with Specific Reference to the Hutchins-Luce Commission.* New York 1950, p. 187 ff.

[5] See William Evert Hocking, *Freedom of the Press. A Framework of Principle.* Chicago 1947, p. 170 ff.

Competition, and thereby the flow of an abundant variety of views and news, can also be promoted by positive government measures. First of all, the Government itself and its agencies may engage in printing, publishing and disseminating activities. It is rather common nowadays that Governments disseminate news by means of governmental or semi-governmental information services, by broadcasting stations, by the production of newreels and by other publications of various kinds. It must be said, however, that newspapers, sponsored by the State, have generally not been able to compete successfully with privately owned papers. Therefore, the private Press always regards any efforts on the part of the State to engage in the newspaper business with apprehension; the State, it has been argued, might be tempted to resort to methods of unfair competition, in other words, to abuse governmental powers for promoting its interests as a publisher of newspapers. As pointed out by the American "Commission on Freedom of the Press", no objection in principle can, however, be raised against efforts made by governments to inform the public of the facts with respect to their policies and of the purposes underlying those policies and to employ media of their own for such purposes to the extent that private agencies are unable or unwilling to supply such media to the government.[1]

The Government may promote competition also otherwise than by taking an active part in the dissemination of information. Suggestions have been made to the effect that legislation provide for new types of companies, safeguarding thereby newspapers not only from governmental interference but also from undesirable influences from big business in general and, at the same time, promoting competition. Beatrice and Sidney Webb suggested in 1920 that "individual or joint stock ownership and commercial profit" should be forbidden in the newspaper field and that the "greatest newspaper enterprise could be converted into consumers' co-operative societies".[2] Kingsley Martin suggests that public corporations be substituted for private management of newspapers, and that the journalistic profession be enabled to play a decisive *rôle* in running the newspapers. Measures of this kind would obviously interfere with the existing property rights with respect to newspapers. Less drastic proposals have recently been made in France. Under the terms of the French "Draft Act regulating the Press" (1947) enterprises retain the right to set themselves up as one of the various forms of joint stock com-

[1] *A Free and Responsible Press*, p. 88 f.

[2] Quoted from Martin, *op. cit.* p. 106.

pany or limited company recognized by the ordinary law but at the same time the "Draft Act" provides for fresh forms of company organization, said to be "less subject to the influence of capital".[1] These new types of companies were explained as follows in a communication to the United Nations from the French Government: "In this way co-partnership companies (*société à participation ouvrière*) have been adapted to the needs of the Press: workers' shares are issued to journalists on the one hand and to Press workers and employees on the other; they confer on both categories, formed into two staff co-operatives, the right of attending general meetings and sitting on the board of directors along with ordinary shareholders, and of sharing in any profits on the same terms as the latter (articles 36 *et seq.*). Moreover, an entirely new form of company has been suggested, that of a founder syndicate (*société à syndicat de fondateurs*). Its purpose is to enable the team of journalists who had founded the paper, in the capacity of a founder syndicate, to own a maximum of 50 per cent of the company's capital (articles 25 *et seq.*) and thereby have a decisive voice in the conduct of the enterprise's affairs."[2] The problem of the legal forms of ownership of newspapers was also dealt with by the British "Royal Commission on the Press". It rejected the idea that newspapers should be owned by the State as well as the suggestion that individual or joint-stock ownership should be prohibited.[3] It had been suggested to the Commission, however, as an alternative to direct prohibition of or interference with private ownership that the formation of trusts should be encouraged by giving taxation benefits to undertakings so owned. Such trusts exist in England and also in some other countries, e.g. Norway.[4] The Royal Commission pointed out, *inter alia*, that a trust does not necessarily remove a newspaper from ordinary commercial ownership and does not necessarily protect the editor. It did not consider that it would be effective or appropriate to put any pressure on proprietors by fiscal inducements or otherwise to adopt either trust ownership or any of the arrangements whose purposes are similar. It welcomed, however, the action of public-spirited proprietors who had taken steps to safeguard the character and independence of their papers, and hoped that the number of papers so protected would grow.[5]

[1] See *Freedom of Information*, Vol. I. p. 28.

[2] Ibid.

[3] See *Report* p. 155.

[4] See Fernand Terrou and Lucien Solal. Legislation for Press, Film and Radio. *Unesco publication No. 607*, Paris 1951, p. 79 ff.

[5] *Report* p. 156 ff.

Measures to help new newspapers to start and independent newspapers to survive have also been discussed. It has very often been said that taxpayers' money could or should not be wasted on subsidies to such enterprises. Some plans have been formulated, however, which try to avoid the objection that any help to some newspapers must necessarily be unfair to others or to the taxpayers. The Political and Economic Planning Committee suggested in its "Report on the British Press" (1938) that the physical equipment of newspapers be owned by a public trust and be made available to the promoters of a newspaper on the basis of a contract which could cover operating expenses, renewals and other charges but would debar the trust from any share in the actual conduct of the paper. A similar suggestion was discussed by the Royal Commission on the Press.[1] The Commission did not think much of it. It stated that the bulk of the capital required to launch a new paper is needed not to buy a plant but to meet running costs, of which the cost of newsprint forms a large part. Moreover, launching a new newspaper could never be other than a highly speculative business. To safeguard itself against the failure of a paper for which a public corporation had provided plant, the corporation would be compelled to consider not merely the adequacy of the publisher's financial guarantee but his chances of proving successful; the problem of deciding fairly what new ventures should be given the advantage of the corporation's facilities might become almost insoluble. These objections concern Great Britain and seem to refer principally to newspapers the purpose of which is to give the latest news and to obtain a large clientele. The situation is different with regard to underdeveloped countries where no or only very few newspapers exist. The governments of such countries might feel compelled to take measures in order to develop a modern newspaper industry. They might apply for technical assistance and financial aid for this purpose, but such aid might be refused to countries where there was no guarantee that these facilities would not remain in the hands of the governments but would be used in harmony with the basic principles of freedom of information. The provision by the government of plants for privately owned and operated newspapers would constitute such a guarantee as it would promote the publication of independent newspapers representing different opinions, and to adopt it would therefore help the countries concerned to obtain technical assistance and financial aid to start newspapers. The public corporation which provides a plant may also be deemed a

[1] *Report* p. 158 ff.

useful mechanism for maintaining, along with the big newspaper enterprises, another type of paper, namely the small periodical which seeks to disseminate opinion and to comment on news. The importance and influence of such papers are sometimes considerable, and such papers, often of high quality, may function as a valuable check on the performance of their bigger colleagues.

The performance of the Press.

Increasing dissatisfaction with the performance of the Press and repeated criticism against it are the reasons for recent investigations and studies such as carried out in United Kingdom and in the United States of America. While industrialization of the Press is a fact and must be accepted as such, and monopolistic tendencies have been both argued and refuted, it can hardly be denied that the performance of the Press needs improvement. The American Commission used strong language in explaining why, in its view, the Press does not meet society's needs: "The news is twisted by the emphasis on firstness, on the novel and sensational; by the personal interests of owners; and by pressure groups. Too much of the regular output of the Press consists of a miscellaneous succession of stories and images which have no relation to the typical lives of real people anywhere. Too often the result is meaninglessness, flatness, distortion, and the perpetuation of misunderstanding among widely scattered groups whose only contact is through these media."[1] The British Royal Commission presented two requirements to be taken as standards in considering the performance of the Press. The first was that the news the Press reports should be reported truthfully. Its conclusion with respect to this first requirement was: "A number of quality papers do fully or almost fully meet its demands. But all the popular papers and certain of the quality fall short of the standard achieved by the best, either through excessive partisanship or through distortion for the sake of news value."[2] The second requirement was that the Press as a whole should give an opportunity for all important points of view to be effectively presented in terms of the varying standards of taste, political opinion, and education among the principal groups of the population. According to the Commission, the Press provided for a sufficient variety of political opinion but not for a sufficient variety of intellectual

[1] *A Free and Responsible Press,* p. 68.

[2] *Report,* p. 176.

levels. "The gap between the best of the quality papers and the general run of the popular Press is too wide, and the number of papers of an intermediate type is too small."[1] Of course, no observers claim that the performance of the Press is bad all through, and it should not be forgotten that the Press deserves not only criticism but also praise for its performance in many respects. To some extent, moreover, the public is to blame for the decreasing quality in the performance of the Press; the Press is selling what the public wants, in the sense of what it will most readily buy in an unthinking mood.[2]

Some of the measures discussed above were devised as remedies for shortcomings shown by studies of the performance of the Press. Most remedies, established by law, invite the objections that they may imply certain dangers to Press freedom though aiming at preserving it. There is one purely legal remedy, which ought to be added to those already mentioned, namely the revision of existing laws of libel. The American "Commission on Freedom of the Press" presented an extensive study of the law of libel[3] and recommended as an alternative to the present remedy for libel, legislation by which the injured party might obtain a retraction or a restatement of the facts by the offender or an opportunity to reply.[4] In several countries the right of reply already exists as a legal institution.[5] The replies of governments to a request for information sent out by the United Nations show that in many countries the adequacy of the existing law of libel has been discussed.[6] This seems to be a field where a comprehensive study of comparative law might be extremely helpful to legislators of many countries.

There have also been proposals to the effect of providing for continuous survey of the performance of the Press. The British "Royal Commission on the Press" recommended that the Press should establish a "General Council of the Press", the object of which should be to safeguard the freedom of the Press, and to encourage the growth of the sense of public responsibility and public service amongst all engaged in the profession of

[1] *Ibid.*

[2] Cp. Martin, *op. cit.* p. 70.

[3] Chafee, *op. cit.*, p. 75—195.

[4] *A Free and Responsible Press*, p. 86 f.

[5] See above p. 31 and below p. 97.

[6] See *Freedom of Information*, Vol. I, p. 221 ff.; replies of Argentina, France, Mexico, New Zealand, Sweden, Switzerland, Union of South Africa, United Kingdom and United States of America. In United Kingdom, the law of defamation was revised in 1952 by the Defamation Act 1952.

journalism. In the furtherance of its objects the General Council should take such action as it thought fit, *inter alia*, to keep under review any developments likely to restrict the supply of information of public interest and importance and to publish periodical reports reviewing from time to time the various developments in the Press and the factors affecting them.[1] The American "Commission on Freedom of the Press" recommended the establishment of an agency to appraise and report annually upon the performance of the Press. In the view of the Commission this agency ought to be independent both of the government and of the Press. It was suggested that it be founded by gifts and that it be given a ten-year trial.[2] Prof. Lasswell, a member of the Commission, stated in 1950 that this proposed agency "is more urgent now than when the commission made the original proposal in 1947."[3] Neither the British "General Council" as proposed, nor the American agency has materialized.[4] The Press in general has been inimical to these and similar proposals, and the big public indifferent.[5] The performance of the Press is being followed on a more modest scale and in a less controversial way by professional courts of honour to be found in Austria, Belgium, Finland, Sweden, Turkey, and other countries, which are given the task of implementing the various existing codes of professional ethics. Of a certain interest is also the London "Fleet Street Forum", started as a platform for ideas and debate among journalists. It also aims at rallying "a body of opinion within the profession . . . to support any journalist who refuses to be party to any misrepresentation by corruption of facts or emphasis". In some countries the journalistic profession is organized by means of professional registers of journalists and/or the establishment of official bodies for the issuance of professional cards authorizing journalists to practice their profession.[6]

[1] *Report* p. 117 f.

[2] *A Free and Responsible Press*, p. 100 f.

[3] Lasswell, *op. cit.* p. 158.

[4] On 28 November 1952, Mr. Simmons, a Labour M. P. introduced a private bill to give statutory effect to the proposal to set up a Press Council to protect and promote journalistic standards. Later developments with respect to the setting up of a Council are described in *I. P. I. Report, Monthly Bulletin of the International Press Institute*, Zürich.

[5] It should be mentioned, however, that the French *Institut Français de Presse*, a private institution, which was established in 1951 and comprises both press enterprises and individuals, purports, *inter alia*, to contribute to the improvement of journalistic practices.

[6] See *UN doc. E/CN. 4/Sub. 1/148*. It includes information concerning measures relating to the definition and identification of journalists in three groups of coun-

Such measures may facilitate the establishment and the implementation of standards of professional conduct and competence. But the need for continuous survey and appraisal of the performance of the Press by a body which represents the intelligent public would not be satisfied by merely professional action.

New media

The main new media created by technological advances, are radio, including television, and film. Many of the problems discussed above under The Press are equally important with regard to radio and film. Industrialism and professionalism are characteristics also of broadcasting and film enterprises, and their performance may be discussed from viewpoints similar to those expressed with reference to the Press. The traditional legal standards, established for the exercise of freedom of information by the Press, do not, however, apply to radio and film. Before dealing with existing legislation for film and radio, attention must be drawn to another venture in the field of freedom of information, namely the rise of the big news agencies.

The news agency.

The news agency is undoubtedly a medium of information, only its function is to seek and transmit information to other media which in their turn disseminate information directly to the public. The newspapers depend to a large extent on the big news agencies, particularly with regard to their supply of news from foreign countries. The news agency like the newspaper has developed into an industrial enterprise, requiring considerable capital, a big staff of professional journalists, and facilities of various kinds, although not the same as the newspapers. Monopolistic tendencies and practices in the organization of news agencies and deviation from the requirements of truthful and comprehensive account of the day's events in their performance, represent dangers to freedom of information. While news agencies are essential to the achievement of a flow of abundant and multifarious information, monopolies in this field may — if in the collection and transmission of news their selection is superficial, biased or twisted — paralyze any efforts on the part of other media

tries, namely Switzerland, United Kingdom, Sweden and the United States; Egypt, Czechoslovakia and Argentina; France and Belgium.

to fulfil their obligations towards the public. In many countries the news agencies have the form of co-operative undertakings, sponsored by the newspapers. Their statutes vary from country to country.[1] Sometimes the State has taken some interest in supporting news agencies. In Switzerland, for instance, the State pays a certain number of subscriptions to the Swiss telegraphic agency, and in Turkey the State holds 40 per cent of the shares of the Turkish "Agence Anatolie" which is organized in the form of a commercial company.

We are dealing, in this chapter, with national law and domestic problems of freedom of information in various countries. When discussing news agencies, however, attention must be drawn to the international implications of the fact that only a very limited number of agencies have resources sufficient to obtain and distribute news on a world-wide scale. While the American UP, AP and INS, the British Reuter and, to a lesser extent, the French APF and the Russian TASS are able to collect and disseminate news all over the world, national news agencies in most other countries, and most newspapers, have no foreign services of their own. In some countries no domestic news agencies exist. In 1949 this was the case of Cuba, Ecuador, Haiti, Honduras, Mexico, Paraguay and Peru in Latin-America, countries in other regions of the world not mentioned.[2] The need for domestic news agencies and for making local cultures known to other countries in a fair and understanding manner, is strongly felt in many underdeveloped countries. They feel compelled, therefore, to take governmental action in order to establish or maintain domestic agencies; they may even feel compelled to take action aiming at limiting the competing power of the big international news agencies, as the domestic agencies might not be able to develop if such action were not taken. Such measures may, however, seriously hamper the flow of information between countries, and the problem of the organization and work of the international news agencies is therefore a concern not only of specific countries, underdeveloped and highly developed, but of the international community.

Radio.

Radio being a new medium, there are no universally developed legal standards which safeguard freedom of expression by means of radio. Constitutional provisions regarding freedom of expression do not in

[1] See Terrou and Solal, *op. cit.*, p. 237 ff.

[2] *Ibid.*

general extend to radio; even if freedom of radio is mentioned in the constitution of a given country, such mention does not necessarily clarify the real legal status of radio in that country.[1] The shortage of wavelengths necessitates licensing of radio stations; therefore, it is legally impossible anywhere to establish a broadcasting station without a license previously granted by the government or a government agency. Radio programs are in general not subject to previous censorship by the government, but in the majority of countries broadcasting is a monopoly of the government or a public corporation, operating under government control. This system also excludes, for all practical purposes, the applicability of the "rule of law" formulated with respect to the Press (above p. 29). In many countries, the protection of the individual against injurious attacks by means of broadcasting is insufficient, and in most countries the whole legal situation of this new medium of information is exceedingly obscure.

In the United States of America radio enterprises are private enterprises.[2] Broadcasting stations which are organs of the federal government or state governments, of state universities, or of municipalities exist but are exceptional. A few other countries, according to information available, have adopted a similar system, e.g. Brazil, Colombia, Mexico, the Phillipines, Venezuela. In some countries broadcasting activities have been systematically divided between private enterprises and governmen-

[1] Three examples may be given. (i) In Italy, article 22 of the new Constitution of 27 December 1947 provides that "all men have the right to express their personal views freely in word, writing or *by any other means of communication*". The only broadcasting enterprise existing is, however, an enterprise, privately owned but subject to control by the Government which appoints representatives to its Board of Directors. (ii) In the United States of America, the First Amendment does not protect freedom of expression by radio. Most of the numerous radio enterprises are, however, private enterprises, and the relevant legislation, providing for licensing (The Communications Act of 1934), includes in article 326 the following: "Nothing in this Act shall be understood or construed to give the [Federal Communications] Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication." (iii) In Australia, section 51 (v) of the Constitution provides that "the Parliament of the Commonwealth may make laws ... with respect to ... postal, telegraphic and other like services". Under this power, the Commonwealth exercises far-reaching control of radio. At the same time, Australia is one of the countries where privately owned stations operate under licenses issued by the Postmaster-General side by side with the government stations.

[2] A detailed analysis of the status of radio enterprises in various countries is contained in Terrou and Solal, *op. cit.*, p. 129 ff.

tal organs (Argentina, Australia, Canada, New Zealand); in most of these countries, however, the private operations are of minor importance compared with the government operations and extensive government control is exercised over the whole field. In an overwhelming number of countries broadcasting enterprises are completely controlled by the State. The system of State control varies however. In India, Iraq and Turkey, for instance, the broadcasting systems are state organizations, operating directly under the control of a governmental agency. In other countries radio enterprises are public corporations. The South African Broadcasting Corporation, for example, is established by an Act of Parliament and controlled by a Board of nine paid Governors appointed by the Governor General in Council. The British Broadcasting Corporation is a public corporation established under Royal Charter. The system is similar in Belgium, Greece and Norway. In Finland, broadcasting is a state monopoly operated by a state-owned company, while in Luxembourg Italy, Sweden and Switzerland, operations are carried out by a private enterprise, subject to control by the State.

In practice, there may be freedom of expression by means of radio communications to a certain extent under any system; there is no "right", however, to such freedom. It should be added that in some countries legal provisions exist guaranteeing the right of political parties or candidates for public office to express their views publicly by broadcasting, e.g. Australia, Austria, Belgium, Canada and the United States. Arrangements or practices to the same effect exist in Italy, New Zealand, Sweden, United Kingdom, and probably other countries.

Films.

Freedom of expression by means of films, including newsreels, is not included in the constitutional concept of freedom of expression of most countries. The legal situation is similar to that of the radio. However, in most countries the private initiative is left free to play a predominant *rôle* in the making, distribution and exhibition of films.[1] At the same time previous restraints, particularly in the form of censorship, are practised in all or nearly all countries, including the countries of Western Europe and the United States of America. The powers of the agencies in charge of censorship are generally extensive, and restrictive measures are applied for a series of reasons. The Australian Customs (Cinematograph Films)

[1] See Terrou and Solal, *op. cit.*, p. 209 ff.

Regulations of 1932, for example, prescribe, as stated by the government of Australia, "that no film shall be registered which is blasphemous, indecent or obscene; likely to be injurious to morality; to encourage or excite to crime; likely to be offensive to the people of a friendly nation; likely to be offensive to the people of the British Empire; or contains any matter the exhibition of which is undesirable in the public interest".[1]

It should be added, however, that in the countries mentioned public opinion usually objects when censorship is applied contrary to the principles of freedom of expression and freedom of information as developed with respect to the Press. In many countries the abolition of film censorship has been advocated, so far without success. While in a number of countries no "rule of law" makes the decisions of the agency in charge of censorship subject to judicial review, the law of other countries provides for such review. The latter is, for example, the situation in the United States of America.

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This chapter has been devoted to presenting principles of national law concerning freedom of information. It shows that the law of the various countries differs both in form and substance; at the same time, the law of almost all countries accepts certain "traditional" standards with respect to the freedom of the Press.

Some additional legal standards have been mentioned as well as suggestions made for the adoption of new rules of law designed to cope with problems which are the result of modern technological and social developments.

It is the task of national legislatures and national courts of law to decide whether new legal standards are needed and, if they think so, to set the rules of law thus required.

At a stage when the question of a revision or completion of the Press law is the object of controversy within many countries, it would certainly not be advisable to try to reconcile, by means of an international convention, the many divergent views expressed and the various "new" standards contemplated or perhaps already adopted in certain countries. It is not possible at present to draw up a complete universal information law. But it should be possible to seek agreement among nations concerning the maintenance of the set of rules which already forms a general pattern.

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[1] *Freedom of Information*, Vol. I, p. 129.

It should be recalled moreover, that efforts have been made within the United Nations to help countries in the development of their national legislation relating to media of information by studying modern trends and their legal implications. A number of specific U.N. studies will be mentioned in the following chapters. Of particular interest is the "Statement of the rights, obligations and practices to be included in the concept of freedom of information" which was adopted by the Sub-Commission on Freedom of Information and of the Press on 3 February 1948 and is reproduced as Appendix 6 to this book.

Chapter III

The Usefulness of International Agreements for Promoting Freedom of Information

There are, of course, in any given country where Press freedom exists shades of opinion concerning its proper meaning and interpretation. Government officials, for instance, may be more inclined than journalists to stress the need for classifying as secret certain material relating to national security; judges may be inclined to draw attention to violations of rules relating to contempt of court while some parts of the public at large may argue that the activities of the courts should be fully open to criticism; religious people may advocate a strict application of the existing law concerning blasphemous libel while agnostics or heretics may take the opposite view. Yet, there is in the countries concerned now-a-days general agreement that freedom of the Press should prevail. Where a parliamentary system exists or any other system by which the government comes into power on the basis of free and general elections, the government does in principle not represent a view which is contrary to that of the public. It is true that the government carries the responsibility for the conduct of the affairs of state and may sometimes be inclined to disagree with one or another of the various groups and interests within the community, but it may still be assumed that in all or most countries concerned, the government, like the public, is interested in taking all possible measures to safeguard and promote the freedom of the Press.

This is important, as only the government may be able effectively to deal with some international problems in the information field. In this chapter such problems will be dealt with under three headings. Firstly, we shall give attention to external affairs relating to media of information. Secondly we shall deal with the method of promoting freedom of information on a world wide basis by laying down a minimum national standard in this field by means of, in the first instance, an international convention. Thirdly, attention will be given to the broader "world community aspect", that is the safeguarding of the interest of "the international society".

A. EXTERNAL AFFAIRS RELATING TO MEDIA OF INFORMATION

In the modern word total isolationism is not possible. Each country must to some extent co-operate with other countries. It has to do so if only to look after its own short-term interests.

A newspaper, a news agency, or a broadcasting station in any given country would not be able to give the public what it needs and wants, if it did not have at its disposal a considerable supply of news from abroad. In order to get such news there must be channels available for the international transmission of news. Postal services and telecommunications must function not only within but between countries. Obstacles to the flow of information like burdensome customs duties must be removed. News media in general do not wish to rely entirely on information transmitted from the national news agencies of foreign countries. Their interest in obtaining full and adequate information makes it necessary for them to be able to send their own correspondents to foreign countries. This pre-supposes the availability of transportation media between countries and the possibility for correspondents of receiving without discrimination passports and visas where needed. In countries visited foreign correspondents must be enabled to gather information and to transmit information to their home country. Moreover, in many countries newspapers or broadcasting stations could not be established or able to operate if newsprint and other facilities could not be imported from foreign countries. In other words, freedom of information would be an empty word in most countries if their governments did not take action in order to help, by negotiations and agreements with other governments, alleviating or removing obstacles to the free flow of information of an economic, financial, legal or political nature.

In order to improve the quality of information, news media and governments may also be interested in co-operation with news media and governments in foreign countries for the purpose of making possible for instance, the exchange of news personnel, educational material and broadcasting programs. Co-operation in the field of the professional training of news personnel may also be deemed useful.

Newspapers, news agencies and other media may prefer to settle their external affairs without governmental intervention. This is, to some extent, possible. Newspapers or professional organizations in one country can, for instance, make arrangements with papers or organizations in other countries for the exchange of news personnel. Facilities

can many times be bought in a foreign country without any governmental assistance. Very often, however, currency restrictions, measures for rationing scarce materials, import and export regulations and so on, call for such assistance. Political obstacles can often be removed only by means of diplomatic intervention, and legal matters must be dealt with by the proper authorities. In some cases, moreover, for instance where telecommunication is involved, no efficient system of transmission of news would be technically possible without extensive governmental co-operation. In other words, media of information need the help of governments in attending to their external problems, and questions pertinent to the work and the interests of media of information are among the matters dealt with by governments in the conduct of foreign affairs.

The methods chosen by governments in dealing with such matters depend on the nature of the concrete problems before them. A government may intervene through normal diplomatic channels in order to obtain an export license for printing machinery or a visa for a correspondent. Governments may informally agree to reduce tariffs on radio receivers. International conferences may recommend policies to be adopted unilaterally by governments. For the purpose of this study, however, it is particularly interesting to examine the extent to which formal intergovernmental agreements have been used and may be used as a method of solving international problems in the field of freedom of information. The problems we are dealing with in this section relate rather to the protection of the national interests of individual countries than to the interests of the world community. In using international agreements (whether bilateral or multilateral) for solving such problems, governments do generally not engage in enacting international legislation; the primary purpose of such agreements is not to lay down a rule of law but to make terms just as individuals do in the course of their day to day conduct of business.

It would not be possible to establish an exhaustive list of intergovernmental agreements of the type envisaged. The field has been explored, however, by the Secretariat of the United Nations, which has issued a number of studies in the form of United Nations documents. Among them is a survey of existing agreements by which countries regulate telecommunications matters.[1] The fundamental agreement is the International Telecommunication Convention (Atlantic City, 1947), dealing with telecommunications on a world-wide basis. There exists also a series

[1] *UN doc. E/CN. 4/Sub. 1/110.*

of additional regional and bilateral agreements, the purpose of which is to organize the flow of information between countries by means of telegraph, telephone and radio, including television. Another United Nations document[1] contains a classification of existing agreements in the field of freedom of information. Among the agreements listed in this study are some concerning reciprocal abolition of visas, agreements the purpose of which is to facilitate in various respects the work of news personnel or of news agencies, commercial agreements concerning, *inter alia*, physical facilities, foreign exchange problems, tariffs, quotas etc. and agreements concerning exchange of information and information personnel. Some of the agreements mentioned concern more directly freedom of information. China, for instance, in treaties of amity with several countries has agreed that "the nationals of each of the High Contracting Parties ... shall enjoy the liberty ... of publication in accordance with the laws and regulations of the country". The Treaty of Friendship, Commerce and Navigation between Italy and the United States of 2 February 1948[2] contains in article XI, paragraph 2, the following interesting provisions:

> "The High Contracting Parties declare their adherence to the principles of freedom of the press and of free interchange of information. To this end, nationals, corporations and associations of either High Contracting Party shall have the right, within the territories of the other High Contracting Party, to engage in such activities as writing, reporting and gathering of information for dissemination to the public, and shall enjoy freedom of transmission of material to be used abroad for publication by the press, radio, motion pictures, and other means. The nationals, corporations, and associations of either High Contracting Party shall enjoy freedom of publication in the territories of the other High Contracting Party, in accordance with the applicable laws and regulations, upon the same terms as nationals, corporations or associations of such other High Contracting Party. The term 'information,' as used in this paragraph, shall include all forms of written communications, printed matter, motion pictures, recordings and photographs."

Some agreements provide for measures to be taken against the dissemination of news which might disturb the good relations between the contracting states. This problem, however, will be dealt with below (p. 124 ff.).

It may, in many instances, be preferable to solve problems of the nature now discussed by means of bilateral agreements. Sometimes regional

[1] *UN doc. E/CN. 4/Sub. 1/105.*

[2] *United States Treaties and other International Acts Series 1829.*

agreements constitute the best method. International agreements, aiming at universal applicability, may however also be convenient. Of the last type are two agreements concluded under the auspices of Unesco referred to immediately hereafter and the two conventions dealt with in the following sections.

The first of the two UNESCO-sponsored agreements is the *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character*. The convention is designed to remove duties, quotas, licenses and other obstacles to the exchange of such materials. Moreover, imports of these commodities will not pay internal duties higher than those levied on domestic products. By January 1953 the convention was signed or acceded to by 22 nations and ratified by Cambodia, Canada, Iraq, Norway, Pakistan, the Phillipines, Syria and Yugoslavia. Ratification by 10 countries is required to bring it into force.

The second convention known as the *Agreement on the Importation of Educational, Scientific and Cultural Materials* grants dutyfree entry, under prescribed conditions, to publications and to visual and auditory materials consigned to approved institutions. It was opened for signature at Lake Success on 22 November 1950 and came into force following ratification by 10 countries on 21 May 1952.[1] [2]

B. THE GATHERING AND INTERNATIONAL TRANSMISSION OF NEWS

The Convention on the International Transmission of News and the Right of Correction, which was adopted by the General Assembly of the United Nations on 13 May 1949 and is reproduced below as Appendix III, is divided into two parts, one dealing with the gathering and international transmission of news and the other with the international right of correction. The General Assembly, on 16 December 1952, adopted a separate Convention on the International Right of Correction, incorporating in the text of that convention some of the definitions and final clauses of the 1949 convention. The status of the 1949 convention has become un-

[1] The parties to the Convention were by January 1953 Cambodia, Ceylon, Cuba, Egypt, Israel, Laos, Monaco, Pakistan, the Phillipines, Sweden, Thailand, Vietnam and Yugoslavia. Eighteen other countries have signed the convention.

[2] Both Conventions are reproduced as appendices to Trade Barriers to Knowledge, *UNESCO publication 847*, Paris 1951.

clear; it remains a convention adopted by the General Assembly although not opened for signature, but its second part has been used for the text of the 1952 convention. In this situation, the General Assembly, if it decides to open the 1949 convention for signature, must take some decisions with respect to its organisation. This was not done in 1952, the logical time, it would seem, for the re-organisation of the text of the convention as a whole.

The objective of the provisions to be found in the first part of the convention is to facilitate (i) the freedom of movement of correspondents in the performance of their functions, (ii) the access to news for all correspondents, (iii) the entry of news despatches sent from correspondents and information agencies in one country to information agencies in another country, and (iv) the egress of news material from one country to another.

The main obligation concerning the freedom of movement of correspondents is contained in article II, while article III provides that legally admitted correspondents shall not be expelled "on account of any lawful exercise of their right to collect and report news material" and article IV gives special provisions for correspondents admitted conditionally to a country in order to cover proceedings of the United Nations or specialized agencies. The obligation undertaken by article II is not fargoing. The Contracting States undertake only to "*expedite*, in a manner consistent with their respective laws and regulations the administrative procedures necessary for the entry into, residence in, travel through and egress from their respective territories" of correspondents from other contracting States. No obligation is undertaken concerning the alleviation of the often extremely restrictive laws and practices with respect to passports and visas which seriously hamper the free movement of correspondents. Contracting States agree furthermore by article II not to "impose restrictions which discriminate against such correspondents". The meaning is not clear, particularly as article IV takes for granted that some correspondents of Contracting States may not be admissible under the laws and regulations referred to in article II. Moreover, according to paragraph 7 of article XII, nothing in the convention "shall be construed as limiting the discretion of a Contracting State to refuse entry into its territory to any particular person or to restrict the period of his residence therein; provided that any such refusal or restriction is based on grounds other than that such person is a correspondent, and that any such restriction as to residence does not conflict with the provisions of article

III". The reference to article III prevents a contracting State from using its full discretion with respect to the expulsion of correspondents, legally admitted. A State may, however, refuse the *entry* into its territory of "any particular person", if the refusal is based "on grounds other than that such person is a correspondent". If this means that a person may not be refused entry because he is a correspondent, but that a correspondent may be refused entry because he is a communist or a bourgeois, a Negro or a white man, a Catholic or a Jew, the anti-discriminatory clause in the end of article II seems to be void of meaning. If this is so, the convention, with respect to the free movement of correspondents across borders, merely obliges contracting States to be expeditious in dealing with visa applications.

As concerns the access to news, each contracting State shall permit and facilitate it for all correspondents of other contracting States (article V). It shall not discriminate amongst them, and it shall give them" so far as possible" the same status as correspondents employed by domestic information agencies. This obligation is limited by requirements of "national security", mentioned in article V, and also by the provisions of article XII to be mentioned below. While the governments of many countries can not do much to "facilitate" access to news, the journalists being accustomed to seek the news by their own methods and to overcome by their own initiative the difficulties involved, the obligation to "permit" access to news may apply, *inter alia*, to governmental information services, governmental press conferences and interviews given by persons in public office. The obligation may therefore contribute to the elimination of obstacles which correspondents meet in many countries and which can be removed only by changes in governmental practices.

The provisions for access to news are supplemented by the provisions in article VI which give correspondents and information agencies access to all facilities publicly used for the international transmission of news material on the same basis and at the same rates applicable to all users of such facilities for similar purposes. This right may be subject to limitations provided for by article XII. It is, however, of great importance.

Article VIII provides that each contracting State shall "permit all news despatches of correspondents and information agencies of other Contracting States to enter its territory and reach information agencies operating therein on conditions which are not less favourable than those accorded to any correspondent or information agency of any other Contracting

or non-Contracting State". The "conditions" are not specified; the article merely provides for non-discriminatory treatment.

The provisions concerning egress of news material are contained in article VII. The contracting States shall permit egress from their territories of all news material of correspondents and information agencies of other contracting States without censorship, editing or delay. The inclusion of safeguards against "editing" and "delay" are, as well known to all foreign correspondents, extremely useful. "Editing" often takes the place of regular censorship and may be even more destructive to a news despatch. Delay is a very effective weapon in a business where the time-factor is particularly important. The word "delay" in itself is vague; it should be made clear that even a very brief delay must be regarded as possibly detrimental to the value of news material intended for transmittal from one country to another.

The contracting States may restrict the right to free egress. Article VII provides that they may make and enforce regulations "relating directly to national defense". Such regulations must, however, be communicated to all correspondents and information agencies of other contracting States operating in the territory of the issuing State and shall be applied equally to them. Censorship may be imposed on news material leaving the territory of a contracting State under regulations relating to national defense (article XII, paragraph 3). In such a case, however, a contracting State must apply a set of conditions laid down by paragraph 2 of article VII (see Appendix 3).

As stated above, article XII contains limitations on all the rights and freedoms granted in the previous articles. Contracting States retain their right to make and enforce regulations for the protection of national security and "public order". They may also prohibit news material which is "blasphemous" or "contrary to public morals and decency". The latter requirements apply obviously to entry and egress of news material only. Laws and regulations for the protection of national security may also restrict the application of the provisions concerning the freedom of movement of correspondents and their access to news. The use of the words "public order" makes it possible for contracting States to apply rather fargoing restrictions, as "public order" (*ordre public*), just as "public morals", may be understood in widely different ways in different countries.

Article XII does not prevent contracting States from applying censorship as a means of enforcing laws and regulations. Paragraph 3 pro-

vides, however, that no contracting State shall impose censorship in peacetime on news material *leaving its territory* except on grounds of national defense and then only in accordance with article VII. In other words, censorship may be applied under article XII with respect to the entry of and the access to, as well as the egress of, news material on grounds of national defense. On other permissible grounds censorship may be used only with respect to the access to news and the entry of news despatches. This possibility would, however, have existed even if not provided for by article XII in view of the rather general terms of articles V and VIII.

It should be mentioned that by article 29 of the International Telecommunication Convention of 1947, contracting States reserve "the right to stop the transmission of any private telegram which may appear dangerous to the security of the State or contrary to their laws, to public order or to decency". It has been argued that there is a "conflict" between this provision and the obligations undertaken under the Convention on the International Transmission of News to impose censorship on outgoing news only on grounds of national defense. It is, however, neither illogical nor uncommon that States agree not to avail themselves of certain "rights". A real conflict would occur only if the Convention on the International Transmission of News tried to establish a system of priorities and rates which would disturb the system of priorities and rates laid down by the International Telecommunication Convention. The former convention does not in any way interfere with that system. A conflict may exist, however, between the obligation under the Convention on the International Transmission of News not to impose other restrictions than those permitted by article XII on the entry and egress of news material, and the obligation undertaken by article 49 of the Universal Postal Convention of 1947, to prohibit the sending by mail from one country to another of "articles whose acceptance or circulation is prohibited in the country of destination". The Postal Administration of one country is, by this article, bound to apply restrictions under the legislation of other countries. A State party to the Convention on the International Transmission of News might in some cases face the problem of being obliged under that convention not to interfere with the egress from the country of certain news material entrusted to its Postal Administration for despatch abroad, and, at the same time, obliged under the Universal Postal Convention to prohibit delivery to the country of destination.[1]

[1] Cp. below p. 78.

Article XII also includes paragraphs aimed at safeguarding, *inter alia*, the interests of contracting States in developing their domestic information agencies. These paragraphs seem hardly necessary from a technical point of view but were included in order to make the issue clear.

The merits of the Convention, as concerns its provisions for the gathering and international transmission of news, are its realism and modesty. It has been described by one of those who contributed most to its drafting and promotion, Mr. Erwin D. Canham, as "a moderate and practical aid to new-gathering and dissemination"; as "an initial charter of liberties for the indispensable act of gathering and transmitting news".[1] Much more could be done, however, in order to facilitate the work of foreign news personnel in particular[2], and to further the free flow of information between countries in general. States could agree to accept more definite obligations with respect to the entry of news despatches, and the permissible limitations on both entry and egress could be defined more precisely in order to prevent abuse. The free movement of correspondents is, notwithstanding the provisions of the convention, subject to the many and often serious restrictions which exist under the laws and regulations of various countries. In some countries, for instance the USSR but also some non-communist countries, the residence in and travel through the country are severely restricted even with respect to legally admitted foreigners. Existing laws and regulations concerning passports and visas also constitute serious obstacles to the free flow of information. Many countries in Western Europe and within the British Commonwealth have made agreements for the mutual abolition of visa requirements. Up to 1 December 1950, the Secretary-General of the United Nations had been officially notified of the conclusion since the end of the war of 83 bilateral agreements for the purpose of reciprocally abolishing entrance visa requirements.[3] Many countries where the policy in this respect is liberal have also by unilateral action granted United States citizens exemption from visas as a special privilege. Such agreements and such action have removed some of the obstacles. Many countries, however, do still apply a system of strict control. The United States is scrutinizing visa applications not only for the purpose of safeguarding its immigration policies but also in order to prevent visitors deemed undesirable from entering the coun-

[1] See Erwin D. Canham, International Freedom of Information. *Law and Contemporary Problems*, Vol. 14, 1949, p. 597 f.

[2] This problem is dealt with in *UN doc. E/CN. 4/Sub. 1/140.*

[3] See *UN doc. E/CN. 2/99*, p. 94 ff.

try. The Immigration and Nationality Act of 1952 (the so-called second McCarran Act) contains severe restrictions relating to the granting of visas.[1] In communist countries a rigid system of political control exists and helps to enforce their "iron curtain".[2] Some countries in addition to the United States, and some colonial territories which still receive many immigrants, apply restrictions for protecting their immigration policies. While political controls might be abandoned or alleviated if the international climate improves, immigration countries may continue strongly to oppose the abolition of visa requirements. Special visas for correspondents would, however, help; and serious efforts on the parts of governments really to expedite the delivery of visas would be extremely important. In these days, correspondents may have to wait for weeks or months before they receive visas due to the fact that they are subjected to the same long drawn out procedures as other applicants.

Any improvement of the situation must probably be based on bilateral or regional arrangements or agreements. There are in existence between neighbouring or allied countries many agreements which tend at removing obstacles to the free flow of information or, positively, to promote it.[3] In the countries of Eastern Europe a series of bilateral agreements exists whose purpose is to facilitate in various respects the work of news personnel. The Cultural Treaty of the Arab League includes in article 11 a provision for the same purpose. The United States of America has negotiated agreements with a number of governments (the so-called Fulbright Agreements under the Surplus Property Act of 1944, as amended by Act of 1 August 1946) which provide funds for reciprocal exchange of students and specialists. These agreements may be described as very valuable for promoting in a general way the free flow of information between countries. The exchange of news personnel between the United States and

[1] See *Bulletin of the Atomic Scientists*, Number 7, 1952, which contains a comprehensive critical presentation of the present American visa policy with respect to foreign scientists.

[2] The "iron curtain" is created not only by restrictive regulations and practices with respect to the entry into the country of foreign visitors. There are also requirements of visas for egress from the countries concerned whereby persons are allowed to leave the country only when their travel is in the interest of the government. A similar but less severe system of control is applied by countries where the government has a discretionary power of refusing to issue passports to applicants, used for prohibiting "undesirable" visits of their citizens to foreign countries. It should be recalled that according to article 13 of the Universal Declaration of Human Rights "everyone has the right to leave any country, including his own".

[3] See *UN doc. E/CN. 4/Sub. 1/105.*

other countries is also facilitated by the United States Information and Educational Exchange Act of 1948. While bilateral and regional agreements of this type do not solve the problem of removing obstacles to the free flow of information on a world-wide basis, they do contribute to better understanding between countries. They also give governments the opportunity of finding technical means for removing such obstacles to the free flow of information as are the unfortunate and not intended result of efforts to solve quite different problems such as those created by the shortage of currency and, particularly, by the policies relating to the determination of the character of the *permanent* population of the countries concerned.

C. THE INTERNATIONAL RIGHT OF CORRECTION

The second part of the Convention on the International Transmission of News and the Right of Correction consists (or consisted) of the articles dealing with the international right of correction. Those articles are identical to articles II, III and IV of the Convention on the International Right of Correction, which was adopted by the General Assembly of the United Nations on 16 December 1952.

The two first paragraphs of article II are in fact in the nature of a special preamble to the provisions concerning the international right of correction. They were inserted as a compromise between a proposal to include amongst the operative provisions of the convention a statement concerning the duties of a foreign correspondent and a strong opposition to any efforts to formulate in an intergovernmental agreement legal obligations in respect of correspondents.

The right of correction is brought into operation when a news despatch transmitted from one country to another by correspondents or information agencies is published and disseminated abroad and a Contracting State contends that the report is false or distorted and "capable of injuring its relations with other States or its national prestige or dignity". The complainant State may, in such a case, issue to the Contracting States, within whose territories the despatch has been disseminated, a *communiqué* stating its version of the facts without comment or expression of opinion. The government of a contracting State which receives such a *communiqué* must release it with the least possible delay, and in any case not later than five clear days from the date of the receipt, to the correspondents and in-

formation agencies operating in its territory, and also transmit it to the headquarters of the information agency whose correspondent was responsible for originating the despatch, if such headquarters are within its territory; but it is not obliged to take any compulsory action in order to have the *communiqué* publicized. If the government concerned does not carry out its obligations under the Convention, the complainant State has the right to submit the *communiqué* to the Secretary-General of the United Nations who shall give appropriate publicity to it through the information channels at his disposal, together with the original news despatch and the comments he may have received from the State complained against (article IV). The complainant State may also "accord, on the basis of reciprocity, similar treatment to a *communiqué* thereafter submitted to it by the defaulting State". A third possibility for a complainant State is to refer its case to the International Court of Justice in accordance with article V of the Convention.

The international right of correction is a remedy of a limited scope, but it might develop into a useful weapon against false or distorted reports if energetic action were taken by the Secretary-General in each case brought before him under the Convention. It must not be overlooked, however, that some difficulties may occur in applying the provisions of the Convention to the relations between States which do not adhere to the same system of information legislation or to the same practices. Under article III, for example, contracting States shall "release the *communiqué* to the correspondents and information agencies operating in its territory through the channels customarily used for the release of news concerning international affairs for publication". In some countries there may not be any such customary channels in existence either because all the files of the government in principle are open to information media which have to seek the news on their own initiative, or because the custom is never to release any news to such media. As explained above (p. 36) Sweden is a good example of the first system, and Turkey under Abd-ul-Hamid may exemplify the second system. In some States all news media and information agencies operating in their territories are owned by the State. Should, in such a case, the Ministry of Foreign Affairs release the *communiqué* to the Ministry which functions as information agency, or printing shop of the newspapers, or broadcasting station? And would it be up to the second Ministry to decide whether the *communiqué* ought to be publicized or not? Or should the government of this State be under the obligation to publicize the *communiqué?* In the case of States where the Press

and other media are privately owned but censored by the government, the government may formally fulfil its obligations by releasing the *communiqué* to correspondents and information agencies, but at the same time effectively see to that publication does not occur. These questions may not be entirely academic. Among the countries which voted for the Convention, Argentina applies a system of strict state control of all information media; Colombia, Egypt and Peru from time to time apply censorship; and in Yemen, the information facilities consist of 1 monthly newspaper, published by the government, and 1 shortwave transmitter which broadcasts 1 hour daily.[1] As already stated, energetic action by the Secretary-General in cases brought to his attention might, however, help promoting a responsible and loyal application of the Convention and thereby also the principles of freedom of information.

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The extensive and continuous use of international agreements, whether bilateral or multilateral, for dealing with external affairs related to freedom of information is an evidence in itself of the usefulness of this method. The method is the conventional one among sovereign States. Their foreign relations are, in fact, regulated by an immense network of conventions. It should be recalled, moreover, that conflicting ideologies with respect to freedom of information may not prevent countries from negotiating and signing conventions in that field for limited purposes. Great Britain and the USSR might agree mutually to facilitate the entry of foreign correspondents; Norway and Spain might conclude a newsprint agreement, and so on. Multilateral conventions, like the above mentioned UN conventions, may, however, be rejected for political reasons of various kinds, particularly in times when the political atmosphere in general is abnormal and therefore does not favour efforts to solve by the establishment of a universal pattern even problems arising out of normal intercourse between States.

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[1] Cp. World Communications. Press. Radio. Film. Television. *UNESCO publication No. 942.* Paris 1951. See also the "Semi-Annual World Surveys of Censorship", compiled by the Associated Press, of which the July report of 1951 is included in *UN doc. E/CN. 4/Sub. 1/143/Add. 3.*

D. EFFORTS TO SET A UNIVERSAL NATIONAL STANDARD OF LAW RELATING TO FREEDOM OF INFORMATION

It is obviously of interest to all countries which regard freedom of expression as essential to a democratic society and are eager to facilitate the work of their own media of information, that other countries share their views. The settlement of problems is easier between countries where the fundamental approach is the same or similar. Efforts to set a universal national legal standard with respect to freedom of information need not, therefore, be motivated only by a desire to write laws for the world community. Agreements between States by which they oblige themselves to construe their national legislation according to a certain legal standard, formulated in the agreement, contribute of course to the ultimate goal envisaged by the Charter of the United Nations, the Declaration of Human Rights and the draft International Covenants on Human Rights. An agreement by which a universal national legal standard with respect to freedom of information is laid down serves the purpose of safeguarding freedom in countries where freedom is achieved and gives a moral backing both to governments which are trying to confer various kinds of freedom on their people, and to people who have to struggle for freedom. But at the same time it may be regarded also as a means of solving problems of a more concrete and immediate nature.

Within the organs of the United Nations the problems pertaining to the drafting of an article on freedom of information for the Covenant on Human Rights, and to the drafting of a Convention on Freedom of Information, have often been dealt with indiscriminately. The purpose of the present study is to discuss these two questions from different angles, regarding the Convention as a first step to the achievement of the law of the world community as embodied in the Covenant, and as, at the same time, an instrument of practical use and immediate applicability which must be less ambitious than the Covenant and also more detailed. It should be added that future conventions may be necessary in order to realize the program set forth in the Universal Declaration of Human Rights and the Covenant but it would be premature to discuss at the present time such distant developments.

The next chapter will be devoted specifically to the problems relating to the drafting of a convention on freedom of information. It should be mentioned now, however, that it has been argued against the adoption of such a convention that freedom cannot be safeguarded by means of

written law. This viewpoint was voiced by the *New York Herald Tribune* of 22 June 1951 in an editorial dealing with the draft Convention on Freedom of Information. It said, "Indeed, the strength of our own First Amendment resides in the fact that it was never precisely codified; to codify is to introduce exceptions, to make exceptions is to provide the levers for destruction of the principle . . . If a precise interpretation had been laid down at the beginning, comparable to what was attempted by the U.N. convention, the principle would have been strangled in its coils, and the interpretation would soon thereafter have become worthless." This statement may correctly express the situation in the United States of America. But it is certainly not applicable to all countries. In Sweden, for example, freedom of the Press has existed to the fullest possible extent since the beginning of the nineteenth century. There, to codify was certainly not to introduce exceptions and provide the levers for destruction. The Constitutional Act concerning the Freedom of the Press, introduced in 1812, by regulating in detail within the Constitution itself every possible matter that could concern the Press protected the Press extremely effectively against not only governmental and administrative interference but also against any action of the legislature which could involve restrictions on Press freedom. This function of a written Press law is also suggested by article 7 of the Constitution of Mexico of 1917 which provides that "the organic laws shall prescribe whatever provisions may be necessary to prevent the imprisonment, under pretext of offenses of the press, of distributors, paper vendors, workers, and other employees of the establishment from which has issued the denounced writing, unless the responsibility of said persons has been previously demonstrated". Other countries have similar experiences of the law as the emancipator.[1] Problems related to an international convention should not be based on the experience of just one country. But it is essential that such a convention does not impose upon any country a legal technique foreign to its needs and customs. It is therefore important to take note of the fact that the draft Convention on Freedom of Information would not impose upon the United States or any other State any obligation whatsoever to adopt a system of written Press law.

However, it would undoubtedly be possible to achieve a higher degree of uniformity with respect to the laws of information also otherwise than by the adoption of a world-wide convention. The possibility of bilateral agreements is at least suggested by the Treaty of Friendship of 1948 between

[1] Cp. above p. 17 f.

Italy and the United States, mentioned above (p. 59). A regional approach is also possible. Countries belonging to a certain region of the world could try to establish, by conventions or by other forms of co-operation, a uniform standard of law which would further the understanding between those countries and facilitate the settlement of various matters. It may be mentioned in this connexion that the countries of Northern Europe (Denmark, Finland, Iceland, Norway and Sweden) as early as in 1872 initiated a system of co-operation in legislative matters by regular meetings for the discussion of legal problems and by carrying out jointly the preparatory work for action by the respective legislatures. Generally, this co-operation has not been formalized by the conclusion of intergovernmental conventions but has led to the adoption in the various participating countries of identical or similar legislation. The existence of identical or closely related legal institutions in the Scandinavian countries has created a common approach to cultural and social matters and made them appear to the world, in spite of differences with respect to foreign policy and historical events, as one Scandinavia. It must also be remembered that the countries of the British Commonwealth, in spite of the fact that the Dominions have developed into States which conduct their internal and external affairs independently of the United Kingdom, are closely bound together by common legal concepts and institutions.

The United Nations may fail in its efforts to have its member states join in a convention on freedom of information by which a common standard of law with respect to that freedom is laid down. It might be possible, in such an event, to achieve similar results by drafting model legislation to be used by countries which contemplate revision of their existing legislation or introduction of new legislation. As the purpose of drafting model legislation would not be to bind any country by the provisions formulated, but to assist countries in solving legislative problems, it would not be necessary to confine the text of any model legislation to such legal standards as are already generally accepted in a greater number of countries. Such legislation could include model clauses concerning, for instance, the protection of "the freedom of distribution", the rights of news personnel to refuse to divulge sources of information, the system of classifying certain news material as secret, the right of reply, problems related to the social security of members of the journalistic profession, measures to combat monopolistic tendencies etc.

If, on the other hand, the United Nations succeeds in its efforts to

achieve a convention on freedom of information, the elaboration of model legislation would still be important. Its purpose would be to help in improving the standard laid down by the convention by removing obstacles to freedom of information which may continue to exist in many countries and in general to suggest solutions of the many legal problems in the field of freedom of information. Model clauses might in such a situation not only be useful to national legislators but could also form the basis for amendments to the convention.

E. THE INTERESTS OF "THE INTERNATIONAL SOCIETY"

It would not be possible rigidly to classify intergovernmental agreements as those dealing with concrete problems which cross frontiers, those which contribute to the establishment of national legal standards, and those which take care of the interests of the international society. In actual life, these three categories overlap. First of all, the international society is interested in all agreements, all settlements, all *rapprochement.* Moreover, that society is urgently in need of regulations which facilitate international communications. Conventions like the International Telecommunication Convention and the Universal Postal Convention are of vital importance not only to each of the contracting States but to the community of nations. It must also be remembered that in many instances an intergovernmental agreement, which was meant to settle a concrete dispute or solve a specific problem, in the course of history turned out to be the nucleus of a rule of international law important to all nations. History rather than logic decides many times whether a given intergovernmental agreement should be classified as a "law making treaty" or an occurrence of only passing interest.[1]

The draft Convention on Freedom of Information is not the only agreement designed at laying down a rule to be incorporated in national law. Most agreements have, formally, such a purpose as by means of constitutional and legal processes which vary from country to country, they in general become part of the law of the land. Yet, most agreements may not influence to any considerable extent the system of law in the various countries. Some agreements do, however, and the draft Convention on Freedom of Information is not unique in a world where many economic and social questions have been the subject of legislative measures based upon international conventions.

[1] Cp. below p. 136 f.

It was stated above that agreements like the draft Convention on Freedom of Information contribute to the ultimate goal of the world community. But other and more fargoing measures are needed to arrive at that goal. These measures include the drafting and adoption of international instruments; among the purposes of those instruments is the safeguarding of freedom of information as a fundamental human right. The Charter of the United Nations, the Universal Declaration of Human Rights and the draft International Covenants on Human Rights are instruments which may, eventually, transform the actual society of many "sovereign" States into *one* society of nations. Those instruments contain a set of rules, forming part of a universal law *in nuce*. They are not drafted, however, with the precision and emphasis on detail which characterize ordinary legislation. They lay down a series of policies or of fundamental principles and, therefore, correspond in style and nature to constitutional texts rather than to legislation. A constitutional principle or a policy needs interpretation in order to be transformed into law. Under the circumstances there are good reasons to discuss the draft International Covenant on Human Rights as an international convention dealing with freedom of information, separately from the draft Convention on Freedom of Information. The draft Covenant forms part of a much more ambitious program, and its aims are more distant.

While the United Nations human rights program mainly follows the line indicated by the progressive improvement of the draft Covenants, efforts have constantly been made to secure, where opportunity exists, undertakings on the part of certain countries to respect the principles of the Universal Declaration of Human Rights, including freedom of information. The Trusteeship Agreements which have been approved by the General Assembly for the various trust territories provide for freedom of speech and of the Press.[1] The Peace Treaties concluded after the Second World War between the Allied and Associated Powers and Italy, Hungary, Bulgaria, Rumania and Finland[2], contain articles providing that the defeated countries shall take measures to secure to all persons under their jurisdiction the enjoyment of human rights and fundamental freedoms, including freedom of press and publication. A similar provision is contained in the Permanent Statute of the Free Territory of Trieste.[2] In the Preamble to the Peace Treaty with Japan,

[1] The texts of the various Trusteeship Agreements are found in *United Nations Treaty Series*.

[2] See *Yearbook on Human Rights* for 1947, pages 390—397.

signed at San Francisco 8 September 1951, it is stated that one of the purposes of the treaty is to enable Japan to "strive to realize the objectives of the Universal Declaration of Human Rights."[1] It should also be mentioned that by the Statute of the Netherlands-Indonesian Union the two partners agree to recognize the right to freedom of opinion and expression.[2] The import of these and similar provisions, drafted in very broad language, is difficult to evaluate. As concerns the Trusteeship Agreements, however, a special United Nations machinery exists for their implementation.

While the United Nations is moving slowly towards the achievement of a higher degree of integration, smaller groups of nations are competing with it or in any case trying to organize in units of States which might, in the long run, acquire a federal structure. We are not going to deal with this trend in general. It is worth mentioning, however, that provisions for the protection of freedom of information are included in agreements which form the legal basis of such organizations of States. The Statute of the Council of Europe, for instance, signed in London 5 May 1949[3], provides in article 1 for common action in the maintenance and further realization of human rights and fundamental freedoms. The members of the Council signed in Rome on 4 November 1950 a Convention for the Protection of Human Rights and Fundamental Freedoms, article 10 of which relates to freedom of expression and reads as follows:

> "(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and to impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

This Convention will be internationally implemented by a European Commission for Human Rights and a European Court of Justice. The

[1] See The Impact of the Universal Declaration of Human Rights, *UN Publication 1951. XIV. 3.*, p. 27 f.

[2] *Ibid.* p. 26.

[3] See *British Parliamentary Papers, Treaty Series No. 51 (1949) Cmd.* 7778.

achievements within the Western European region of the world are obviously to be regarded as promising attempts in harmony with the aims of the United Nations and likely to support its efforts to safeguard human rights on a world-wide level. The experience won by those countries where the traditional western ideas of human rights and freedoms are most firmly established in the minds of the citizens, and their implications best understood, must be of value to other countries and to the United Nations.

There are other examples of regional organizations which are concerned *inter alia* with freedom of information. The Charter of the Organization of American States, signed in Bogotá on 29 April 1948[1], provides for co-operation in the field of human rights among the 21 American republics belonging to it and, in article 31, specifically for "free cultural exchange by every medium of expression". The Cultural Treaty of the Arab League, signed on 20 November 1946[2], includes in article 13 a clause according to which the seven States of the Arab League "will work for acquainting their sons with the social, cultural, economic and political conditions in all Arab countries, by means of broadcasts, the stage, cinema and press or by any other means".

In appraising regional co-operation in the field of human rights it should be taken into account that, as pointed out by Dr. Pieter Drost[3], any effective system of international implementation may have to rely on regional agencies functioning as courts of appeal from decisions taken by local agencies. Such regional organs of implementation in a universal system of human rights are not to be confounded with regional systems of human rights. However, the existence of such systems undoubtedly facilitates the creation of regional agencies familiar with the psychological and ideological background in the region.

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[1] See *International Organization*, Vol. II (1948) p. 586.

[2] See *The Middle East Journal* 1947 p. 207.

[3] Pieter N. Drost, *Human Rights as Legal Rights*, Leiden 1951, p. 135 ff.

CHAPTER IV

The Drafting of a Convention on Freedom of Information

The United Nations has not met with success when trying to set a universal standard of law concerning freedom of information by means of an international convention. While the original British proposal to that effect met with approval by the 1948 Conference on Freedom of Information, the question was dealt with without result by the General Assembly at the second part of its third session early in 1949. At its fifth session in 1950 the General Assembly sought a way out of the *impasse* by setting up a special committee to revise the text of the proposed convention. This committee met in the beginning of 1951 under the chairmanship of Dr. Raul Noriega of Mexico, and prepared a new and improved text. It also recommended a conference of plenipotentiaries to be convened for the purpose of finalizing and signing the convention. The Economic and Social Council, however, at its summer session 1951 rejected this proposal.

The reasons for this failure may be partly political as explained in the introduction to the present study. They may also be technical; it seems possible that a more thoroughly revised text might meet with approval on the part of a considerable number of countries in spite of the political implications. The purpose of this chapter is to consider the technical questions, i.e. the legal problems involved in drafting a convention on freedom of information. It seems practical to take as a starting-point the various texts drawn up by the organs of the United Nations (see Appendix 5). It might be useful, however, to compare these texts with certain principles which evolve from the discussion in the previous chapters of the problems of international legislation in this field.

These principles are the following:

1. *The convention should confine itself to setting a common standard of national law in the field of freedom of information.*

It seems reasonable to assume that different techniques of drafting must apply on the one hand to conventions which aim primarily at solving

problems which cross frontiers, and, on the other hand, to those having as their main purpose to guarantee a certain standard of law within the borders of contracting States. Concerning freedom of information, many countries might be perfectly willing to guarantee a certain standard of law, including for instance the prohibition of previous restraints, but would not agree to apply the same rules to information crossing borders.

It should be added that the fact that the UN draft Convention on Freedom of Information concerns freedom to seek, receive and impart information "regardless of frontiers" and therefore applies also to the international transmission of news has already caused confusion. According to article XII, paragraphs 1 and 2, of the Convention on the International Transmission of News and the Right of Correction nothing in that convention shall be construed as depriving a contracting State of its right to make and enforce laws and public regulations "for the protection of national security and public order" or "prohibiting news material which is blasphemous or contrary to public morals or decency". By adopting the draft Convention on Freedom of Information at it stands, contracting States would give away the right to restrict the international transmission of news for the purpose of protecting "public order" or to prohibit news material, which is "blasphemous", or "contrary to public morals or decency" although not including expressions which are directly obscene. In other words, the Convention on the International Transmission of News provides for limitations which are not permissible according to the draft Convention on Freedom of Information — which is accused of being excessively restrictive! Another example is article 29 of the International Telecommunication Convention whereby States reserve "the right to stop the transmission of any private telegram which may appear dangerous to the security of the State or contrary to its laws, to public order or to decency". To accept the draft Convention on Freedom of Information as it stands is to surrender part of the right reserved under the Telecommunication Convention. Similar difficulties or even real legal conflicts may occur with respect to provisions in other telecommunication agreements and in agreements concerning postal services.[1] Whatever the standards should be, it is obviously not sound to

[1] There is an obvious conflict between the UN draft Convention on Freedom of Information, and the Universal Postal Convention of 1947 (cp. above p. 64). By article 49 of that Convention the contracting States undertake not to send by mail to another country any "articles whose acceptance or circulation is prohibited in

deal at the same time and in the same instrument with legal rules relating to freedom of information within the borders of the various countries and with rules relating to information crossing borders.

2. *The language used in the convention must be precise, thereby preventing the possibility of widely divergent interpretations.*

The reason for this requirement is that terms like "there shall be liberty of the Press[1]" or "Freedom of the Press is guaranteed"[2] do not mean the same or exactly the same thing in the various countries which may become parties to the convention. The convention must spell out clearly the obligations which are undertaken by it. Another technique might be used in the Covenant on Human Rights as that instrument presupposes an extensive machinery of implementation providing for the development of an interpretative jurisprudence. This question will be dealt with further in connexion with the discussion of specific clauses in the draft Convention.

3. *The traditional legal standards in the field of freedom of information must form the basis of the provisions of the convention.*

This is essential as the standards laid down in the convention necessarily will be compared to traditional standards; the relationship of the two must be clear. At the same time the convention should not try to solve the many controversial problems which relate to "new" standards, but must not prevent contracting States from developing such standards, provided they are not contrary to those laid down in the convention.

If, however, the Convention is to apply also to radio and film it must be remembered that it is not possible to deal with all media by sweep-

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the country of destination". By the draft Convention on Freedom of Information, on the other hand, contracting States are obliged not to interfere with the flow of information across frontiers if not explicitly permitted to do so by article 2 of that Convention. This is a real legal conflict. In order to avoid it a provision would have to be inserted in the draft Convention to the effect that nothing in that convention would prejudice the obligations undertaken by contracting States under article 49 of the Universal Postal Convention as concerns their relations to States which are not parties to the Convention on Freedom of Information.

[1] The Constitution of Norway of 17 May 1814, article 100.

[2] The Federal Constitution of Switzerland of 27 May 1874, article 55.

ing statements which disregard the fact that in all countries the legal status of radio and film differs from that of the Press.

4. *The convention must take into account the constitutional situation of the various countries, particularly federal States.*

When two or more States conclude a give-and-take agreement of the conventional type it might well be argued that each State, in signing the convention, should have previously solved existing internal problems of a political or legal nature, and should not request the insertion in the convention of specific clauses relating to the constitutional law of a single country. A more generous attitude seems indicated, however, with respect to a convention which is aimed solely at achieving a certain standard of domestic law within the contracting States.

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The UN draft Convention on Freedom of Information does not satisfy any of the four requirements indicated above. Its articles apply formally to the transmission of news across borders and conflict, thereby, with the provisions of other conventions. The language of the draft Convention is not always precise. The standards of law laid down by the convention do not include the prohibition of previous restraints or even previous censorship; and "the rule of law" included among the traditional standards of Press law is not clearly spelled out. Moreover, it is not made clear to what extend the Convention is to apply to radio and film. Finally, the draft Convention does not include any "federal clause" or any clause which takes into account the fact that in some countries specific legislative action might be necessary to give effect to the convention upon its ratification. In the following pages the text of the UN draft Convention will be studied in the light of the criticism implied by the four requirements indicated above.

A. THE RIGHT TO FREEDOM OF INFORMATION

Article 1 of the draft Convention on Freedom of Information defines the right to freedom of information, and imposes upon contracting States the obligation of securing freedom of information. In article 2 certain

limitations on the exercise of that freedom are declared permissible under certain conditions; limitations cannot be imposed arbitrarily, they must be necessary with regard to the matters enumerated in article 2 and also "clearly defined by law" and "applied in accordance with the law". The term "limitation" is, however, not defined but is undoubtedly used to refer to various types of measures besides the imposition of penalties, including, presumably, previous censorship. This means that the obligation of securing freedom of information as defined by article 1 is watered down far below the legal standard already adopted in most countries with regard to the Press. If censorship can be applied for all causes mentioned in article 2, freedom may be reduced to a minimum. On the other hand, the absence of a provision prohibiting censorship may be explained by the fact that the obligation undertaken by article 1 is formulated in such broad and general terms that provisions for all kinds of restrictions have seemed inevitable; the reference to all media, for instance, makes it impossible to prohibit censorship as films are censored in most countries and broadcasting stations are licensed or government-controlled in all countries. Any revision of the draft Convention aiming at restricting the scope of the permissible restrictions must start with article 1.

The first question to put is the following: Is article 1 necessary? Is it necessary to try to define in the convention freedom of information?

It should be recalled that in England the principle of Press freedom was once expressed as consisting in printing without any previous license subject to the consequences of law. If this formula were followed in the convention, the latter would (i) prohibit censorship and (ii) explain the consequences of law by defining non-permissible restrictions. There is an obvious objection against this solution. The English formula is part of the unwritten Common Law. It is inherent in a system based upon "the rule of law". The convention, on the other hand, would apply to a great number of countries with a legal system different from that of England. Therefore, an expression in the text of the convention must be found also for "the rule of law" as applicable to the principle of freedom as well as to the limitations. Moreover, the convention is a piece of written law; the technique of written law would necessitate some statement of principle to which the listed permissible limitations would form exceptions.

The next question, therefore, would be how to define in the convention the principal obligation to be undertaken by governments.

It should be recalled that the draft Convention applies a method con-

trary to that of the English Common Law. The convention says there shall be freedom, subject only to such consequences of law as are provided for by the convention.

As already stated, the exceptions from the rule are so fargoing that the definition of freedom seems rather meaningless. Let us assume, therefore, that the number and scope of permissible limitations were severely reduced. How, in such a case, would the principle of freedom be most expediently expressed? A possibility might be to adopt the terms of several constitutions which, like the First Amendment to the Constitution of the United States, use general terms. "The Contracting States shall pass no law abridging the freedom of information."

The obvious objection is that in the United States the First Amendment presupposes interpretation by the courts, particularly the federal Supreme Court. In written-law countries the general principle of the constitution is supplemented by detailed provisions contained in the Press law and applied by the courts. The Form of Government of Finland of 17 July 1919, for instance, after laying down the principle of freedom adds the following: "The rules concerning the exercise of these rights shall be issued by law". Again, the Constitution of the Lebanese Republic of 23 May 1926 states in article 13: "Freedom of speech and of writing, the freedom of the press . . . shall be guaranteed within the limits laid down by the law."

If, in an international convention, a broad statement of principle were used, this provision would be open to different interpretations in various countries as their legal concepts of Press freedom differ. A Swede might claim that according to the convention the power of classifying public documents as secret could not in any contracting country be exercised by the Executive or the Administration.[1] A Mexican might claim that according to the Convention in no country could a printing press be sequestered as an instrument of a press delict.[2] In the views of the citizens of many European countries discrimination in the use of public carriers for transporting newspapers would be prohibited by the convention. In one country, governmental measures against monopolistic tendencies in the field of news media would be regarded as prescribed by the convention in order to guarantee freedom; in another, such would be regarded as clearly prohibited. The Convention provides that any dispute between two or more contracting States concerning the interpretation or application

[1] Cp. above p. 36.

[2] Cp. above p. 26, fotnote.

of the Convention shall be referred to the International Court of Justice. Remembering that in the United States, the First Amendment had not achieved the upsetting of suppression of Press freedom under state legislation until 1931, sixty years after the adoption of the Fourteenth Amendment and a hundred and forty years after the Philadelphia Convention[1], it seems safe to assume that a considerable time would elapse before the International Court of Justice would have developed a series of court decisions defining a general principle of freedom of information for universal application. It should also be taken into account that the International Court is not specialized in this field. Any single case, where a contracting State was accused of violating the principal obligation under the Convention, would require the most extensive research on the part of the International Court before it would be able to give a verdict.

The main point seems to be that the convention is not part of a constitution and is not supposed to play, in its sphere, the role of a world constitution. The Covenants on Human Rights may lay down general rules, it being understood that those rules would not be effectively applied until after a certain period of time. The implementation of the Covenants might also be helped by the establishment of a specific machinery devised to supplement the International Court of Justice. But the draft Convention is designed to enter into effect shortly after its adoption and therefore requires unequivocal and precise juridical provisions.

A provision prohibiting censorship, as well as provisions defining the nature and scope of permissible restrictions, could be drafted in relatively precise technical language. But how to formulate the main principle if an undertaking in broad and general terms to "secure freedom of information" seems meaningless?

Article 2 of the draft Convention provides that limitations on freedom of information must be "clearly defined by law" and "applied in accordance with the law". This rule of law, however, should apply not only to limitations but also to the provisions which affirm the principle of freedom. A possible reply to our question would be to draft article 1 as an undertaking on the part of the contracting States to "guarantee by law" the right of freedom of information. The words to "clearly define by law" which suggest an undertaking to issue legislation would not be acceptable to states like the United Kingdom where the guarantee is based entirely on judicial decisions or the United States which has a

[1] Cp. Chafee, Legal Problems of Freedom of Information in the United Nations. *Law and Contemporary Problems*, Vol. 14, No. 4, 1949.

constitutional guarantee stated in general terms and supplemented by a series of judicial decisions. On the other hand, to "guarantee by law" would imply the possibility of different implementation of the undertaking in different countries. The guarantee would mean that in each contracting State the rules of law applicable to freedom of information would have to be defined either by legislation or by Common Law.[1] The International Court of Justice would not be asked to pass judgment on the law of a given country if that law provided only for such limitations as were permissible under the convention, but it would constitute a violation of the convention within the jurisdiction of the International Court if the Press were interfered with arbitrarily or by regulations not enacted by the legislature or subject to review by the courts. This interpretation of the undertaking to "guarantee by law" should be spelled out in the convention.

A further question must be discussed: should article 1 refer to all media of information? Article 1 of the UN draft Convention refers to the various media by using the terms "... orally, in writing or in print, in the form of art or *by duly licensed visual or auditory devices*". The words "duly licensed" and the alternative words "legally operated" which figured in previous drafts are obscure. They may be interpreted as allowing a contracting State to put upon those media any restrictions or liabilities by means of licensing. If such an interpretation of the words "duly licensed" is correct, the convention would not in any respect safeguard freedom of information, by "visual or auditory devices". Another interpretation is, however, possible and, in fact, suggested by paragraph (c) of article 7 of the draft Convention, which states that nothing in the convention

[1] There will always be a question what rules of law really "apply to" freedom of information. A government may take measures, for instance, by orders or administrative regulations which, in the view of another government, violate the convention as they regard freedom of information; under the convention only the legislature would be competent to lay down rules regarding freedom of information. The task of giving a verdict in such cases, brought before the International Court, may in some instances be extremely difficult. It seems reasonable to assume, however, that allegations would not be made in cases where freedom of information would not be seriously hampered even if doubts could be raised from a strictly legalistic point of view. The question is one of "proximity and degree". In a country, for example, where the Press is privately owned but the railways as well as the airlines are operated by the State, a decision with the effect of prohibiting the transportation of newspapers by air might not really affect freedom of information while a supplementary decision by which the railroads would transport newspapers only once a week might paralyze that freedom.

shall affect the right of any contracting State to take measures which it deems necessary in order to control international broadcasting originating within its territory; this proviso would evidently be unnecessary if the above interpretation of article 1 were correct. Therefore, it might be assumed that the words "duly licensed" should be interpreted to mean that licensing conditions of broadcasting and newsreel establishments should *not* be such as to affect the substance of what is broadcast or shown in newsreels.[1] The text of the draft Convention is, however, far from clear on this point.

An article 1 which confined itself to obliging contracting States to "guarantee by law" freedom of information might apply to all media, if it was understood that the law need not be the same with respect to all media.

The discussion above may be summarized in the form of the following suggested text of article 1:

Suggested Text	(Text of the UN draft Convention Freedom of Information)
Subject to the provisions of this Convention,	Subject to the provisions of this Convention:
(a) Each Contracting State shall guarantee by law *equally*[1] to its own nationals and to such of the nationals of every other Contracting State as are lawfully within its territory, *without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*[1], freedom to seek, receive and impart information and *ideas of all kinds*[2] either orally, in writing or in print, in the form of art, or *through any other media*[3] *of his choice.*	(a) Each Contracting State shall secure to its own nationals, and to such of the nationals of every other Contracting State as are lawfully within its territory, freedom to seek, receive and impart information *without governmental interference*[4] and *regardless of frontiers*[5] information and *opinions*[2] orally, in writing or in print, in the form of art or *by duly licensed visual or auditory devices*[3]*;*
(b) The rights and obligations relating to the exercise of the freedom to seek, receive and impart information shall be determined by law.	(b) No Contracting State shall regulate or control the use or availability of any of the means of communication referred to in the preceding paragraph in any manner discriminating against any of its own nationals or of the nationals of any other Contracting State as are lawfully within its territory on political grounds or on the basis of their race, sex, language or religion.[1]

[1] Cp. *UN doc. E/2046*, page 6.

(1) The antidiscriminatory clause found in paragraph (b) of the UN draft might be replaced by the underlined wording in the suggested text in order to express the same principles as are expressed in the draft Covenant on Human Rights, as suggested in UN document A/AC. 42/4 p. 7 ff. The remainder of paragraph (b) of the UN draft does not seem to serve any purpose as article 8 of that draft gives contracting States the right of reserving to its own nationals the right to edit newspapers or news periodicals produced within its territory and the right to own and operate telecommunication facilities within its territory.
(2) The words "ideas of all kinds" are to be found in article 16 of the first draft Covenant on Human Rights. There is no reason not to make the texts of the two instruments conform where possible.
(3) The words "through any other media of his choice" are also taken from the text of the draft Covenant.
(4) The words "without governmental interference" seem unnecessary. In principle, freedom of information should be protected against all kinds of interference. The omission of the words would not oblige any contracting State to take action against any specific type of nongovernmental interference. Their inclusion, on the other hand, would not oblige any contracting State not to take such action, as legislating *per se* hardly could be regarded as "governmental interference".
(5) The omission of the words "regardless of frontiers" reflects the desire not to create a conflict between the Convention on Freedom of Information and other instruments directly concerned with the international transmission of news.

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Objections might be raised against the suggested text as it implies in paragraph (b) the right of contracting States to regulate freedom of information. Such a right is, however, implied also in paragraph (b) of the UN draft which prohibits regulation or control in a certain case only, namely when such regulation or control is based on discrimination.The suggested text spells out the obligation to subject freedom of information only to such regulations as are based on the law, judge-made or constitutionally enacted by the legislature. The convention would hereby include "the rule of law" which, as shown above, is one of the main features of the Press law of most countries. Moreover, national legislatures would be bound by the provisions which discriminate between permissible and non-permissible limitations on the exercise of freedom of information. It seems particularly important to list among limitations which are not permissible previous censorship of the Press, and to find means of reducing the use of censorship with respect to broadcasting and films.

B. PERMISSIBLE RESTRICTIONS ON FREEDOM OF INFORMATION

The prohibition of previous censorship occupies a front seat in most constitutions. In the discussed Convention on Freedom of Information, however, the proper place of such a clause is after the provisions by which certain restrictions on freedom of information are described as permissible, as the prohibition of censorship forms an exception to these provisions and limits the scope of the permissible restrictions by declaring that restrictions may in no case take the form of previous censorship. We are therefore postponing the discussion of a possible censorship clause until we have dealt with the "limitation clause". This clause ontains an enumeration or a definition of the various permissible restrictions. But it also includes certain conditions for the introduction of restrictions. According to the introductory part of article 2 of the UN draft Convention only such limitations or restrictions are permissible as regard matters enumerated in that article and are (i) "clearly defined by law"; (ii) "applied in accordance with the law"; and (iii) "necessary" with regard to the matters enumerated, e.g."the protection of national security" or "the prevention of fraud". These conditions have been formulated in order to close the door to possible abuse of the right to limit freedom of information, given to contracting States by article 2. Another similar safeguard is to be found in article 3 of the draft convention. Before dealing with the list of restrictions we shall study the various safeguards against abuse established by the draft Convention. It must be repeated once again, however, in order to avoid misunderstanding, that while article 2 gives the contracting States the right to retain or introduce in their domestic legislation such limitations as are declared permissible, a State by becoming party to the convention does not undertake any obligation to introduce in its legislation any provisions limiting freedom of information. Yugoslavia may wish permission to retain a clause in its Penal Code prohibiting reports which undermine friendly relations between States and the convention would, if article 2 were amended to that effect, give Yugoslavia as a possible party to the convention this right, but the inclusion in the convention of such an amendment would not oblige Canada, for example, to amend its Penal Law along the Yugoslav lines. If the convention permitted restrictions with regard to "matters likely to injure the feelings" of nationals of a contracting State, this would affect the rights of American journalists to write about the private life of any foreign tyrant only if the law of the United States were amended as to prohibit

such stories and, let us add, the Supreme Court did not find such a law unconstitutional under the First Amendment. This function of article 2 is often misunderstood and not only by the newspapers.[1] In favouring certain clauses which would allow restrictions, government representatives have sometimes used language implying a belief on their part that the inclusion of such clauses would oblige, and not merely permit, a contracting State to take such restrictive measures as referred to in the clauses discussed.

Safeguards against abuse

(*i*) "*Clearly defined by law*".

This safeguard is important. It prevents governments from limiting freedom of information by prescribing that limitations must be defined by law. This idea would be already covered, however, in a convention which included paragraph (b) of article 1 as suggested above. But the clause goes further; it also limits the discretion of national lawmakers by providing that the limitations must be defined "clearly". In order to comply with the requirement of clarity a statute, limiting the exercise of freedom of information in one respect or another, must use the detailed technique of, for instance, the penal codes of most countries; in no case would such relatively broad language as is used by article 2 itself in describing the various types of permissible limitations be permissible in a statute. The text, however, needs improvement. At present it reads as follows: The exercise of freedom of information may "be subject to limitations, but only to such as are clearly defined by law, etc." The word "such" refers to "limitations"; by limitations may be understood penalties, liabilities or other restrictions, in other words the sanction applied. It is, however, not the sanction which should be "clearly defined by law", but the cause for its application. Therefore, as pointed out by Prof. Cha-

[1] See, for instance Elisha Hanson, The United Nations and Freedom of Press, *American Bar Association Journal*, 1951, s. 417 ff. Dealing with the proposed clause for permissible limitations with regard to reports "likely to injure the feelings of nationals of the State", Mr. Hanson, a lawyer, states that if it had been in effect in 1933, "not a word could have been printed in the American press regarding the policies of the Hitler government in Germany and the tyrannical methods used to enforce them". He continues: "If this proposal should now become effective not a word could be published in American newspapers about the Stalin government in Russia, the Peron government in Argentina, the Mao government in China or the Franco government in Spain."

fee in dealing with the corresponding text in the draft Covenant on Human Rights[1], the text should read: "but only *for causes which have been* clearly defined by law."

(*ii*) "*Applied in accordance with the law*".

This condition does not refer to the legislature. It concerns government officials, public prosecutors, judges, in other words officers in charge of the application of the law at various stages. It is a safeguard against arbitrary action, requiring that the law as a whole, including the procedural law, should be followed in matters relating to freedom of information. It is, of course, in the nature of the law that it requires obedience. Any violation of the law, even if committed by an official in the performance of his public functions, would normally lead to punishment and restitution. If, however, in any contracting State the law should be violated by not being applied with respect to the enforcement of a certain limitation on freedom of information and if the violation were connived at by the authorities, it would be possible to bring the case before the International Court of Justice under the requirement of the Convention on Freedom of Information that limitations must be "applied in accordance with the law".

The insertion of this clause in the draft Convention was suggested by the representative of Lebanon, Mr. Azkoul, in the special committee of the General Assembly in 1951. He interpreted it as meaning that the "courts would decide in case of dispute." This interpretation can hardly be tenable as the law of some countries may not require that disputes concerning the application of legislation which limits freedom of information must be settled by the courts. The additional safeguard contemplated by Mr. Azkoul, namely the obligation of States to have disputes on freedom of information adjudicated by the courts, could, however, be clearly expressed, e.g. by adding to article 2 a new paragraph to that effect.[2]

(*iii*) "*Necessary*".

The requirement that limitations must be "necessary" with regard to the matters enumerated in article 2 limits the discretion of national lawmakers. The importance of this safeguard is questionable as in many

[1] See Chafee in *Law and Contemporary Problems*, Vol. 14, 1949, p. 577 f.

[2] Cp. below, p. 92.

cases only the lawmaker himself can judge the requirement of necessity. The International Court of Justice would undoubtedly hesitate before deciding for instance that statutory regulations for classifying certain material as secret for the protection of national security would not be "necessary". The Court may, of course, also meet obvious cases. Provisions for instance for the seizure and confiscation of all volumes of a novel when obscene expressions are to be found in only one or some of its volumes would not be "necessary".

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Article 3 of the draft Convention, containing a further safeguard, reads as follows:

> "Nothing in the present Convention may be interpreted as limiting or derogating from any of the rights and freedoms to which the present Convention refers which may be guaranteed under the laws of any Contracting State or any Conventions to which it is a party."

In some countries where international agreements become "law of the land" automatically upon their ratification, the apprehension may be expressed that the limitations listed as optional or permissible may have the effect of amending national constitutional law or Press law. The First Amendment to the United States Constitution may be used as an example. It runs along the following lines: "Congress shall pass no law abridging freedom of the Press." Would American courts, if the United States had ratified the convention, have to interpret the First Amendment *as if* the following had been added to it: ". . . except for causes such as listed in article 2 of the Convention on Freedom of Information"? The answer is "no"; such an interpretation is out of the question as the function of article 2 is only to limit the scope of the obligation undertaken by each contracting State with respect to the other contracting States under article 1. The insertion of article 3 would, however, serve the purpose of making entirely clear that the fact that the convention permits contracting States to limit freedom of information for certain causes, without thereby violating the convention, does not restrict the rights and freedoms guaranteed under the laws of the contracting States or any convention.[1]

[1] Compare, concerning the law of the United States, Chafee, in *Law and Contemporary Problems* Vol. 14 p. 569. When introducing his proposal for the insertion of

It is important to recognize the fact that no country where freedom of information is really respected would sign and ratify a convention if that action would endanger the freedom already achieved in the country. The special committee of the General Assembly showed its understanding of this fact, when it accepted the proposed insertion of the new article 3 by 11 votes to none with 4 abstentions (India, Pakistan, USSR and Yugoslavia).[1] There is, however, another objection against article 2 as it stands in the UN draft which is similar in purpose although less technical and more political. It has been said that the list of permissible limitations suggests that the United Nations regards the types of limitations listed as "normal" or fair. The list was established, however, to meet the needs of a great number of countries with different legislation and legal concepts. It is therefore probable that, at present, in no country are all the listed limitations applied or even regarded as tolerable. The list of limitations if regarded as a standard of law would certainly appear as the lowest possible denominator of freedom, and a country where all the listed limitations were extensively applied at the same time would certainly not serve as a model for the world! At the summer session of the Economic and Social Council in 1951 the delegation of Uruguay suggested as an additional safeguard against abuse a wording of the introductory part of article 2 by which each signatory State should be allowed to make the exercise of freedom of information subject only to such limitations as are in force in its territory at the date when it ratifies the convention.[2] In other words, article 2 would permit contracting States to retain in their domestic law listed limitations which already exist, but not to introduce new limitations even if included in the list. This clause would remove the objections made against article 2 that it is "suggestive" and, at the same time, meet the reasonable demands of contracting States.

In summing up the discussion of the introductory part of article 2 the following new text is suggested:

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article 3 in the UN draft convention, the representative of the United States said that the new article was probably not "strictly necessary"; it might however be useful for the purpose of clarification. See *UN doc. A/AC. 42/23*, p. 10 ff. Safeguards may also be taken on the national level by the countries concerned. See Eberhard D. Deutsch, The Peril in the Treaty-Making Clause. *American Bar Association Journal*, 1951, p. 659 ff.

[1] Only the representative of Yugoslavia voiced objections against the proposal.

[2] See *UN doc. E/AC. 7/L/ 106.*

Suggested text	(Text of UN draft Convention)
(a) The exercise of the freedoms referred to in Article 1 carries with it duties and responsibilities. Each Contracting State may therefore subject it to limitations *for causes which have been* clearly defined by law, but only to such as are *in force in its territory at the date when it ratifies this Convention*, and are necessary with regard to: (i) etc. — — — (b) Limitations must be applied in accordance with the law. Any dispute concerning the interpretation or application of limitations shall be settled by the courts. Any criminal charge against any person concerning the violation of rules of law which limit the exercise of freedom of information, shall be determined by the courts.	The exercise of the freedoms referred to in Article 1 carries with it duties and responsibilities. It may therefore be subject to limitations, but only to such as are clearly defined by law; applied in accordance with the law and necessary with regard to: (a) etc. — — —

Paragraph (b) of the suggested text incorporates the idea dicussed above which was expressed in the special committee of the General Assembly by Mr. Azkoul of Lebanon. Article 3 of the UN draft Convention which refers to the whole question of limitations should logically follow after not only article 2 but also the provision concerning the right of reply, included in Article 4 of the UN draft Convention, and a possible article concerning censorship.

The list of restrictions

General clause or exhaustive clause?

During the whole discussion of the UN draft convention two different ideas have been expressed concerning the organisation of the article dealing with limitations. The original British proposal as well as the texts of both the Conference and the special committee enumerate the permissible limitations exhaustively and in detail. The reason given for this method is that limitations must be clearly defined and restricted to clearly limited fields.

According to the other school of thought, the limitations should be defined by outlining in general terms, or even by giving examples only, the purpose or nature of permissible limitations. In favour of this method it has been argued that it is impossible to take into account the multiplicity of national legislation in a specific enumeration. It has also been maintained that a long list of such limitations would in effect result in encouraging the introduction of restrictions rather than safeguarding freedom itself. This argument could not be maintained against a text which includes the safeguard suggested by Uruguay and discussed above (p. 91).

The United States has been specifically interested in formulating a "general clause" as an alternative to the exhaustive clause. At the Conference the United States delegation proposed that the introductory part of article 2 read as follows:

> "The right to freedom of expression carries with it duties and responsibilities and may therefore be subject to penalties, liabilities and restrictions clearly defined by law which are based on recognition of the rights of others, *particularly* with regard to: . . ."[1]

If this proposal had been adopted, the article would have included an enumeration of restrictions, but they would have been enumerated only as examples and other, unspecified, restrictions would also have been made permissible. The special committee of the General Assembly discussed two proposals for the text of article 2 which were, technically, exhaustive but were supposed to list "the spheres in which free men had agreed to restrict freedom of expression", rather than enumerate "all the specific cases in which the State might impose restrictions".[2]

The two proposals which were presented by the representatives of Lebanon and the United States, respectively, read as follows:

Lebanon	United States
A Contracting State may impose upon the exercise of the freedom referred to in Article 1 only such limitations, clearly defined by law and applied in accordance with the law, as are necessary for the protection of national security for the prevention of disorder or crime; for the protection of public safety,	A Contracting State may impose upon the exercise of the freedoms referred to in Article 1 only such limitations, clearly defined by law and applied in accordance with the law, as are necessary for the protection of national security; for the prevention of disorder; for the protection of public safety, health or

[1] *UN doc. E/CONF. 6/C. 4/56.*

[2] See *UN doc. A/AC. 42/SR 13,* p. 5 and 11.

health or morals; for the protection of the rights of reputations of others; for ensuring the fair administration of justice; or for preventing the disclosure by a public servant of confidential information received in an official capacity.

morals; for the protection of the rights or reputations of persons, natural or legal; or for ensuring the fair administration of justice.

The committee rejected both proposals and decided in favour of exhaustive and detailed enumeration. Its reasons seem sound. A limitations clause which gave examples only or which used rather broad terms in describing permissible limitations would open the door to a series of restrictions not envisaged by the convention. Some might be rather reasonable limitations which have long existed under the Press law of countries where freedom of information indisputably is respected and upheld. Others might be dangerous to freedom, and go beyond the intentions of the convention, but there would be no useful legal basis for discrimination between these two kinds of restrictions not foreseen by the convention. The result would be the destruction of any efforts to enforce effectively the obligations undertaken by the convention. It is true that the International Court of Justice would be given the task of deciding disputes concerning the interpretation and application of the convention. If the limitations clauses were drafted as precisely as possible and permissible limitations were enumerated exhaustively, the Court would have a legal basis for its verdict. If, on the other hand, it had to interpret a "general clause" it would have to study the philosophy of freedom of information and the legal concepts of the law relating to freedom of information in all countries parties to the convention. Having performed this extensive task it would have to lay down by a series of decisions the same kind of rules as have been discussed within the various organs of the United Nations in trying to draft article 2, and it would meet the same difficulties. The establishment of a body of judicial decisions explaining the import of a "general" limitations clause would take a considerable period of time — decades or perhaps even hundreds of years. In the meantime uncertainty would reign. A general clause may be good for a national constitution or an International Covenant on Human Rights both of which presuppose an extensive machinery of implementation by which the clause would be satisfactorily interpreted and in the course of time acquire the character of binding law. A convention, on the other hand, meant to serve an immediate and practical purpose, must be drafted

in precise language and include enforceable rights and obligations. The "general clause" would transform the instrument from a legally binding inter-governmental agreement into a declaration of principle of debatable value.

This argument also applies to the idea of including in the convention a "residual" clause such as that suggested by the United States at the Conference in connexion with the discussion of the article relating to freedom of information in the draft Covenant on Human Rights. The idea was to include a clause at the end of the list of limitations, reading as follows:

> "expressions regulated or restricted by law to further the general welfare and protect the rights of others, in the interest of peace, progress and public order."[1]

The purpose of this and similar "basket clauses" is, of course, to avoid other clauses which are regarded by many governments as particularly undesirable like that relating to "false or distorted reports". But the result would be in the case of the Convention, if not the Covenant, that the instrument would be unenforceable.[2]

The exhaustive clause.

An exhaustive enumeration of permissible limitations must necessarily be rather extensive. It is natural that delegations taking part in drafting such a list are anxious to cover at least all such limitations, included in their domestic law, which are regarded as indispensable. Moreover, the limitations listed can not be defined in every detail. They must be more detailed and more concrete than provisions that list only the "spheres" where limitations may be applied. But the legislation of various countries includes such a variety of concepts and differs so widely with respect to legal technicalities that any clause, intended to state a common stand-

[1] *UN doc. E/CONF. 6/C. 4/28.*

[2] In the view of Prof. Chafee, discussing the draft Covenant, "A third solution would be to list the main limitations, as now, and then require each nation to report to the Secretariat any old or new laws in other categories". If protests were made against any such limitations they could be the subject of diplomatic negotiations. If India and Pakistan wanted a statute restraining Mohammedan newspapers from inciting pogroms against Hindus or *vice versa*, the matter could, according to Prof. Chafee, be handled under "the provision for unmentioned limitations". See *Law and Contemporary Problems* Vol. 14, 1949, p. 572 and 580.

ard, must be drafted in non-technical language. It should be precise but not legalistic.

For what causes should limitations be permitted? In seeking a reply to that question consideration must again be given to the variety of concepts included in the national legislation of the various countries. It would not be possible to impose upon the contracting States any specific legal philosophy or the legislative technique of any individual country. It seems obvious that a general agreement concerning the wording of the list of permissible restrictions is possible only if each contracting State makes certain concessions to the formulation of a list broad enough to cover certain well established concepts of press law and penal law of other countries. In order to illustrate this principle three examples may be chosen from the discussions within the United Nations.

The first example concerns the clause found in paragraph (h) of the UN draft concerning "disclosure of information received in confidence in a professional or official capacity". This clause was sponsored by the United Kingdom. The clause was needed, evidently, in order to cover certain statutory offenses laid down in the British "Official Secrets Act" which prohibits *inter alia* the communicating of information by any "person who holds or has held office under His Majesty". In the special committee of the General Assembly the representative of the United States voted against a text of article 2 proposed by the United States "because it incorporated a British amendment concerning the disclosure of official information which his delegation found objectionable", while the representative of the United Kingdom declared that he, on the contrary, "considered the amendment necessary and essentially reasonable" and had consequently voted in favour of the proposed text as a whole.[1] It would not seem that the technicalities separating American and British law with respect to official secrets, should make it impossible to reach an agreement on freedom of information between those two countries. But the acceptance of the standpoint of the United States delegation would have meant that the United Kingdom would not have been allowed to retain for its own domestic use the existing provisions of its "Official Secrets Act" because they were, from an American point of view, objectionable.

Another example relates to paragraph (g) concerning "expressions about other persons, natural or legal, which defame their reputations". Here, the United Kingdom was anxious to add the following words: "or

[1] See *UN doc. E/2046*, p. 14.

are otherwise injurious to them without benefiting the public". The inclusion of the words "without benefiting the public" would mean that a contracting State would not be permitted to provide for the punishment of injurious expressions if it did not, at the same time, make an exception for such injurious expressions which "benefit the public". The insistence on these words on the part of the United Kingdom means that it wanted all contracting States to introduce in their legislation, in order to carry out its obligations under the convention, one feature of the specific institutions of English Libel Law known as "justification" and "privilege". Several representatives in the special committee of the General Assembly pointed out that according to the law of their countries "the public interest could not serve as an excuse for defamation".[1] It seems only reasonable indeed to let countries be free to accept or not accept the idea of the public benefit as a justification in libel cases.

The third example relates to the right of reply. All the UN draft texts include a provision according to which a contracting State may establish a right of reply or a similar corrective remedy. The reason for the inclusion of this provision in the text is that the obligation to publish a reply or a correction may be regarded as constituting a "limitation" on freedom of information; a newspaper can be compelled to insert a reply by the law of several countries (e.g. Austria, Belgium, Brazil, Colombia, China, Denmark, France, Greece, Italy, Luxembourg, Mexico, Norway, Turkey). The special committee of the General Assembly retained a provision for the right of reply in the UN draft Convention by 9 votes to 2 (USA and USSR) with 2 abstentions. The representative of the United States described the provision as "too vague". If a provision for the right of reply were not included in the draft Convention a large number of countries might be obliged to abolish a venerable institution of Press law regarded in those countries as an effective means of implementing a basic principle of all good democracies, known as *audiatur et altera pars*. It does not seem reasonable that countries where the right of reply is not regarded as useful or valuable should invoke the principle of freedom of information for imposing their point of view on others.

The generous approach towards the drafting of the list advocated here can, of course, not be applied without any limits, and it must be made clear that the text in any case will necessitate, at least in countries with written Press Laws, a revision of existing limitation clauses by which they are remodeled or restricted in scope in order to correspond to the

[1] See *UN doc. A/AC. 42/SR 19*, p. 8.

obligations undertaken under the Convention. The list is not a catalogue of the bulk of existing limitations. Some of these are included, others are not.

The most controversial issue in drafting the convention relates to the proposal for inclusion of limitation clauses relating to "false or distorted reports which undermine friendly relations between peoples or States", "reports regarding racial, national or religious discriminations" and "matters likely to injure the feelings of the nationals of the State". At the request of the special committee of the General Assembly, the Secretary-General of the United Nations studied the question of the inclusion of such clauses and suggested in a memorandum[1] more precise texts for such clauses, without expressing any opinion on the question of policy involved. The two texts, thus redrafted, read as follows:

> "Expressions which ridicule, insult or threaten any person or group of persons on account of nationality, race, sex, language, religion or social origin, or which affront national symbols or offend religious feelings."
>
> "The diffusion, with intent to incite to a breach of the peace or an act of aggression, of reports which are known to the person responsible for the diffusion as false or distorted."

The national legislation of many countries contains provisions against group libel, blasphemy and attacks on national symbols. The Secretary-General's memorandum refers to the law of a number of such countries, e.g. Austria, Egypt, France, Great Britain, India, the Netherlands, New Zealand, Sweden. In the United States, a law passed by the State of Illinois, making it unlawful to publish any matter that exposes any group to hatred and contempt on the grounds of race and colour, was held valid by a decision of the Supreme Court on 28 April 1952.[2] Further examples are given in an Addendum to the Secretary-General's memorandum where texts of national legislation are quoted.[3] It seems, under the circumstances, hardly objectionable to permit the retention of such limitations as envisaged by the first of the two redrafted texts.

The proposal for the inclusion of a clause concerning "false or distorted reports" has been the subject of severe controversy since it was

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[1] *UN Doc. E/2046.*

[2] See *UN doc. E/CN. 4/321*, p. 7. — Cp. Pauli Murray, *States' Laws on Race and Color*, New York 1950, p. 127 ff.

[3] *UN Doc. E/2046/Add. 1.* See also *Yearbook on Human Rights* for 1947 (Canada).

first made at the Conference on Freedom of Information by the delegation of India. It may be argued in favour of this clause that its omission would compel a number of countries, which have some legal provisions against false or distorted reports, to change their legislation. Among such countries are Brazil, Cuba, Egypt, France, Guatemala, Norway and Sweden. Moreover, there are in force between some countries agreements which contain undertakings on the part of the contracting States concerning prohibitive and preventive measures against certain reports detrimental to good international relations. Among such are the agreements between India and Pakistan of April 1948[1] and of 8 April 1950[2], and the International Convention concerning the Use of Broadcasting in the Cause of Peace, to be discussed below (p. 130). There would, obviously, be a conflict between the obligations undertaken by these agreements, and those which would emanate from a convention on freedom of information which did not provide for the retention in national legislation of penal provisions against false or distorted reports which undermine friendly relations between States. Organs of the United Nations have repeatedly indicated the desirability of counteracting such reports. Would it be proper to draft a convention, sponsored by the United Nations, in such a way as to preclude the right of contracting States to take action by means of legislation against a type of propaganda which has been unanimously condemned by the United Nations?

It has been said against the proposed clause that it entails the creation of a supervisory machinery to eliminate what governments might regard as false or distorted reports which would be tantamount to censorship and easily lead to abuse.[3] This objection may be met by including in the convention a provision which prohibits censorship. It has also been said that the clause leads to the creation of "novel crimes in the area of speech and press".[4] This objection would be met by the inclusion in the convention of the safeguard proposed by Uruguay (see above p. 91); only countries where provisions of this type are in existence would be concerned. More serious is the objection that this clause is wholly unlike other restrictions because of the difficulty for a court or a jury to decide whether a report is "false" or "true". By allowing restrictions of this type, the convention might condone legal action taken in order to suppress

[1] See *UN Doc. E/CN. 4/Sub. 1/105*, p. 28.

[2] See *UN Doc. E/CN. 4/Sub. 1/112*, p. 22 f.

[3] See *UN Doc. E/2046*, p. 19.

[4] Cp. Chafee in *Law and Contemporary Problems* Vol. 14, 1949, p. 578 ff.

undesirable discussion. According to the text redrafted by the Secretary-General a report must be "known to the person responsible for the diffusion as false or distorted". The memorandum of the Secretary-General explains that the criterion of knowledge "presupposes the existence of evidence proving both the fact that a report in question is false or distorted and that the person responsible for its diffusion with intent to incite to a breach of the peace or an act of aggression, is fully aware thereof."[1] Legally, this criterion seems to meet the criticism. The possibility of abuse will, however, continue to exist until the universal standard of law as a whole, including administrative and procedural law, has reached a still higher level of objectivity and integrity.

The balance of arguments for and against the clause under discussion seems to indicate that it should be included in the convention. The decisive reason is political rather than juridical. The fact that it has not been possible, internationally, to devise any effective remedy against war propaganda, based on false or distorted reports, makes it advisable not to prevent countries, if they wish, to find statutory means of combating such propaganda within their own borders.

The text suggested by the Secretary-General may, however, not be the only one which should be considered. It restricts the possibilities of taking action against "false or distorted" reports by adding several criteria. It might be objected that those criteria are too detailed and too technical. Furthermore, the difficulties in interpreting the words "false" and "distorted" remain. Attention should be drawn to a suggestion made by the Government of Mexico in its comments on the Conference draft. The suggestion was to include in paragraph (b) of article 2 of that draft the words "violate regulations governing international law and order".[2] The whole paragraph would read: "Expressions which violate regulations governing international law and order, or[3] which incite persons to alter by violence the system of government, or which promote disorder." This suggestion avoids the words "false or distorted reports"

[1] *UN Doc. E/2046*, p. 21.

[2] See *UN Doc. E/856*, p. 6. It should be mentioned that the comments of the Mexican governments do not include a suggestion to delete paragraph (j) of the Conference text, see Appendix p. 160. The inclusion of the suggested words in paragraph (b) would, however, make paragraph (j) unnecessary.

[3] In the Mexican text the word "and" appears instead of "or". The meaning can not be, however, that expressions which incite persons to alter by violence the system of government would be prohibited only if they also violate regulations governing international law and order.

and puts emphasis on the purpose of the restrictions contemplated, namely to safeguard *international* law and order. It could hardly be denied that the interest of international law and order deserves attention just as do the interests of national law and order. It should not be overlooked that such a clause would give contracting States discretion in formulating regulations "governing international law and order" but at the same time the Mexican suggestion is more consistent than any other proposed text with "the rule of law".

C. PROHIBITION OF PREVIOUS CENSORSHIP

Article 2 as remodeled limits the applicability of restrictions in several respects. The causes for which limitations are applied must be clearly defined by law and the limitations must be necessary with regard to the enumerated matters. Limitations must be applied in accordance with the law and disputes must be settled by the courts. Moreover, the list of limitations is not "suggestive" any more, as only such limitations may be applied in a country as were in force in that country at the time of its ratification of the convention. But the term "limitation" in itself is not defined. Limitations may take any form and allow not only penalties but also previous restraints. In a given country the legislature may adopt a law "for the protection of national security" according to which newspapers published by "subversive" organizations must be censored by a government official before being printed or distributed. The causes for censoring would be clearly defined in the law and disputes with respect to the application of the law would be referred to the courts. Yet, there would be censorship and the freedom of information of the publications concerned would be severely hampered. No previous restraint is as odious as censorship. It may be technically difficult to prohibit all previous restraints thereby making the punishment for offences the only important form of permissive restrictions on freedom of information. But it would not be impossible, technically, to outlaw the use of previous censorship of the Press in peace-time. Radio and film raise specific problems.

The Conference on Freedom of Information adopted by an overwhelming majority a resolution condemning peacetime censorship. It decided, however, *not* to include a provision prohibiting censorship in either the draft Covenant on Human Rights or the draft Convention on Freedom

of Information. This decision was supported by a large number of countries where peacetime censorship of the Press is unconstitutional or non-existent, including France, the United Kingdom and the United States.

The question was brought up at the Conference in connexion with the text of the relevant article of the draft Covenant. The UN Sub-Commission on Freedom of Information had (by 10 votes to 2, cast by the representatives of Czechoslovakia and USSR) suggested the inclusion of the following paragraph: "Previous censorship of written and printed matter, the radio and newsreels shall not exist." The vote in the Fourth Committee of the Conference was taken on a Swedish draft resolution which as amended read as follows: "Previous censorship of written and printed matter, of radio and newsreel shall not exist. Previous control of films may be maintained provided that their release may only be prohibited on grounds of public morality." The first sentence was rejected by 13 votes to 8 with 1 abstention and the second sentence by 14 votes to 4 with 5 abstentions.[1] During the discussion in the Fourth Committee of the Conference the British proposal to *delete* the paragraph suggested by the Sub-Commission, was supported by the representatives of Australia, France, Greece, India, Poland, and USSR. The British representative stated that his country was "in complete agreement with the *progressive* elimination of censorship".[2] The representative of Poland said that "while all agreed on the progressive elimination of censorship as a long term aim, it was useless to adopt such a proposal until the basis for international cooperation had been created".[3] The Australian delegate "could not agree to the complete elimination of previous censorship". Previous censorship in Australia, he said, "was exactly defined, and extremely limited in scope; it was aimed to prevent just those abuses of freedom of speech which figured in paragraph 2 of article 17", corresponding to article 2 of the draft Convention.[4] The United States delegation in Geneva was in favour of prohibiting censorship but officials in Washington held the opposite view. The result was that the United States delegation abstained from voting on the censorship issue but one member of the delegation, Prof. Chafee, spoke eloquently in the Committee in favour of retaining the paragraph suggested by the Sub-Commission![5]

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[1] See *UN Doc. E/CONF. 6/C. 4/SR 9*, p. 6.

[2] Italicised here. See *UN Doc. E/CONF. 6/C. 4/SR 8*, p. 10.

[3] *UN doc. E/CONF. 6/C. 4/SR 9*, p. 21.

[4] *Ibid.*, p. 2.

[5] Cp. Chafee in *Law and Contemporary Problems*, Vol. 14, 1949, p. 576 f.

The question was brought up again in 1949 in the General Assembly of the United Nations when the draft convention was discussed. The representative of the Netherlands proposed the inclusion of the following provision: "No Contracting State shall, however, impose censorship in peacetime on news material except on grounds of national defense."[1] Some discussion of the matter occurred but no action was taken on the proposal.

In the special committee of the General Assembly which met in 1951 censorship was mentioned only in passing. The chairman, Mr. Noriega of Mexico, remarked for instance that the proposed clause concerning "false or distorted reports" entailed "the creation of supervisory machinery to eliminate false, slanderous and discriminatory reports which would be tantamount to censorship".[2] Another member of the Committee, Mr. Baroody of Saudi-Arabia, remarked that "governments would always find some means of interpreting the convention to justify the imposition of censorship".[3] He did not conclude, however, that remedies should be found in order to counteract the danger indicated.

An explanation of the discouraging attitude taken by so many governments towards this problem may be that the proposed censorship clause related not only to the Press but also to radio and newsreel. The international tension may also have contributed. The prohibition would, however, only apply in peace-time, and it should also be recalled that the draft convention provides for measures derogating from the obligations under the convention not only in time of war but also in the case of "other public emergency".

The inclusion in the convention of a provision prohibiting censorship would make it easier for many governments to accept the limitation clauses included in article 2. It might also be regarded as highly desirable from the point of view of principle that the convention make reference to the important problem in the field of freedom of information constituted by the existence or possibility of censorship. At the same time, such a provision must distinguish between the Press and "new" media. A provision against censorship based on the various statements of principle made within organs of the United Nations might be formulated as follows:

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[1] *UN doc. A/C 3/494.*

[2] See *UN doc. A/AC. 42/SR 14*, p. 3.

[3] *UN doc. A/AC. 42/SR 19*, p. 11.

"Any form of censorship constitutes a curtailment of the freedoms referred to in Article 1. Each Contracting State shall therefore:

(a) Refrain from imposing previous censorship in peacetime on printed matter;

(b) Take the necessary steps to promote the progressive abolition of censorship on broadcasts and films within its territory."

The introductory sentence is not "operative". The statement of principle is, however, important. By paragraph (a) previous censorship in peacetime would be absolutely prohibited with respect to the Press. The obligation under paragraph (b) is a "moral obligation" only and it could be argued that moral obligations should not be included in a convention. It might, however, be regarded as awkward not to mention at all the attitude of the convention towards censorship of other media than the Press. It should be added that censorship of radio broadcasts and films would be permitted under the convention only when carried out in accordance with article 2.

D. PROVISIONS FOR "NEW" LEGAL STANDARDS

It is natural that governments before they decide to become parties to an international convention on freedom of information examine to what extent the provisions of the convention may conflict with existing "new" legal standards designed at solving problems which were not foreseen when the traditional legal standards of Press freedom were developed, and to what extent the provisions of the convention preclude the introduction of new standards. The UN draft convention includes a series of articles beginning, "Nothing in the present Convention shall affect, etc." which show that governments have considered the problem. The draft Convention does not provide for amendments; it seems reasonable, however, that a provision to that effect should be included as a new article.

The most important problem related to "new" standards concerns broadcasting. It must be made quite clear that the convention does not prohibit the licensing of radio stations which is a technical necessity. Moreover, it must be made clear that neither does it prohibit the system of public ownership of broadcasting stations which is adopted in most countries of the world.

The various provisions of the UN draft Convention which have the

purpose of clarifying or making special exceptions to the principle laid down in article 1 are to be found in articles 5 to 9 inclusive. It seems practical to deal with these articles in a different order than that used in the draft convention.

Article 8 concerns the ownership of media of information and incorporates some common features of existing information legislation (see Appendix 5 p. 164). This article would need a slight redrafting in order to provide for licensing and public ownership of broadcasting stations if, as suggested above (p. 84 f.), the words "duly licensed" are to be removed from article 1. As redrafted the article would read:

> "Nothing in the present Convention shall prevent a Contracting State form reserving under its legislation:
> (a) to its own nationals the right to edit newspapers or news periodicals produced within its territory; or
> (b) to its own nationals or to one or several licensees only, the right to own or operate telecommunication facilities, including radio broadcasting stations, within its territory."

Article 7 (see Appendix 5) provides that "nothing in the present Convention shall affect the right of any Contracting State to take measures which it deems necessary in order: " — here follow three paragraphs of which paragraph (a) reads: "to develop and protect its national news enterprises until such time as they are fully developed." The measures are not specified, and it seems reasonable that they should not be measures contrary to the principles laid down in the previous articles. Possibly financial and similar assistance would be the kind of measures contemplated but this is not made clear. It is extremely difficult to draft the text in a way which excludes possible abuse and, at the same time, respects the well-understood desire of under-developed countries to develop their own media of information. It might be suggested that the words "which it deems necessary in order", included in the introductory part of the article, be revised to read: "which are necessary". The judgement of necessity would in such a case not be left entirely to the country concerned; the International Court of Justice would in the case of an alleged violation of the convention be entitled to review the judgment of necessity, as it is entitled to do with respect to article 2. Paragraph (b) of article 7 provides for measures "to prevent restrictive or monopolistic practices or agreements in restraint of the free flow of information". As pointed out by the United Kingdom Government[1] such meas-

[1] See *UN doc. E/856*, p. 26.

ures could hardly conflict with any other provision in the Convention. Even if not strictly necessary, the provision appears to serve a reasonable purpose in clarifying this issue.

By paragraph (c) of article 7 each contracting State reserves the right to "control international broadcasting within its territory"; the subsequent part of the paragraph which relates to the activities of foreign news personnel would not be necessary in a convention which does not deal with the international transmission and gathering of news.[1] It might be argued that the right to control international broadcasting would also fall outside the scope of the Convention. "International broadcasting" is, however, not controlled at the frontier like imports and exports but by measures taken within the country, and the term "international broadcasting" is in itself not quite clear. Therefore, the provision has a purpose. Moreover, it might appear essential if States should decide to co-operate in order to further, by means of broadcasting, the cause of peace (see below p. 130 ff.).

Article 6 (see Appendix 5) deals with the currency problem which relates to post-war difficulties and is not, directly, related to freedom of information. Its proper place seems to be at the end of the clauses providing for exceptions or clarifications. As to article 9 (see Appendix 5), it would not be necessary at all if the convention did not deal with the right to seek, receive and impart information "regardless of frontiers".

Article 5 has been the subject of controversy. It contains a set of ethics to be observed by persons employed in the dissemination of information and opinion to the public. Certainly, governments are allowed to have and express an opinion with respect to this matter. It is important to everybody that news personnel observe high standards of professional conduct, and it may be valuable that they be told from time to time what governments, which carry the responsibility for caretaking of the interests of society as a whole, regard as good professional conduct. The newspaperman should enjoy a maximum of freedom in performing his professional duties but he is not a sacred cow; his behaviour is up to censure and criticism in just the same way as is the behaviour of a Prime Minister, or a President, or any other citizen. Yet, this set of moral standards is out of place in an intergovernmental agreement. It may be adopted as a resolution by a Conference convened for the purpose of adopting and signing the convention, but it should not be given the form of an article in a legally binding document. The introductory part of

[1] Cp. above p. 77 ff.

the article provides that contracting States "shall encourage the establishment and functioning within its territory" of professional organisations. It is extremely unclear, however, what forms such "encouragement" would take, and it might be dangerous to the freedom of the profession, and perhaps also to the trade-union rights of the working journalists, if the provision in any way should be construed as giving governments the right or obligation to interfere with the formation of professional organisations or the formulation of their statutes. Such organisations are valuable, but they must be the result of the efforts of the profession, acting entirely on its own behalf. Interference from governments in order to curb the freedom of association in this field would be dangerous to freedom of information. This article, therefore, should oblige governments *not* to obstruct or not to interfere with the establishment and functioning within its territory of professional organisations of persons employed in the dissemination of information and opinions. If a government wishes to follow and appraise the performance of the Press and other media in order to encourage the observance of high standards of professional conduct it can do so, for instance by the establishment of a "Council of the Press" or a similar institution.[1] The convention would not prevent it from doing so, but it would hardly be possible to include in the convention an obligation to this effect. As it stands article 5 of the UN draft convention is meaningless or even dangerous. Rewritten as suggested below (p. 116) it might constitute an additional safeguard of freedom.

E. FEDERAL AND SIMILAR CLAUSES

There are three types of clauses which provide for the application of the convention under domestic law. The "federal clause" deals with specific problems related to federal states. The "non-self-executing clause" concerns countries where a treaty, according to the constitutional law of that country, becomes binding upon the courts, the officials and the private citizens without having been implemented or promulgated by a specific act of the legislature or the executive. The third type of clause is the "colonial clause" dealing with the application of a treaty to territories for the conduct of whose foreign relations contracting States are responsible.

[1] Cp. above p. 48 f.

A "federal clause" is under consideration by organs of the United Nations concerned with the draft Covenent on Human Rights.[1] In federal states the constitution usually provides that certain legislative matters fall outside the area of competence of the federal legislature and must be dealt with by legislatures of the constituent states, provinces or cantons. The federal government, responsible for the foreign affairs of the country, would not be willing to accept obligations under a convention which might create a constitutional conflict within the country. It can secure of course, before signing or ratifying a convention, the necessary authorization within the country. But if legislative action is needed on the part of a series of state or provincial legislatures, it may be difficult and sometimes impossible to obtain preliminary consent. This is, in short, the reason for a "federal clause".[2] Under this clause federal governments would be bound only to take such action *as is constitutionally possible* in order to give effect to the terms of the convention. It should be added that, in the long run, federal states could hardly claim a privileged position in international affairs due to the fact that their constitutions do not provide for an organ competent to deal with the totality of foreign affairs.

The "non-self-executing clause" has a different purpose. It does not necessarily apply to federal states but concerns every State where treaties become domestically binding immediately upon ratification. In countries where this is not the case, a convention is "binding" internationally, but it will not be applied by their courts until it has been made domestically effective by a specific act. A convention which concerns the content of the national legislation of the contracting States may require careful examination of the existing legislation and this examination may necessitate revision of that legislation. In countries where treaties are "self-executing," the immediate applicability of a convention on freedom of information may create confusion and uncertainty. It was argued above that the convention on freedom of information should be drafted with understanding of various international complications. Such results should be avoided as the prohibition of the institution of the right of reply in countries where this right is regarded an important safeguard of freedom of expression; as the invalidating of politically

[1] See Report of the Eighth Session of the Commission on Human Rights. *UN doc. E/2256*, p. 55 f.

[2] Cp. Max Sørensen, Federal States and the Protection of Human Rights. *The American Journal of International Law*, 1952, p. 195 ff.

important agreements between India and Pakistan; or as the forced introduction in all countries parties to the convention of some specifically British features of libel law, etc. The same spirit of conciliation would lead to the understanding of the specific constitutional requirements of federal states and countries where treaties are self-executing, and the acceptance in good faith of some clauses which meet these requirements.

The UN draft Convention includes as it stands in article 16 a clause according to which "the provisions of the present Convention shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they non-self-governing, trust or colonial territories, which are being administered or governed by such metropolitan State". The content of this clause is the same as that of a clause adopted by the General Assembly for insertion in the International Covenant on Human Rights and inserted as article IX in the Convention on the International Right of Correction. As human rights belong to everybody without exception, it has seemed contradictory to the purpose of the Covenant to include in it a clause by which its application to colonial territories would depend upon the discretion of the metropolitan power. If metropolitan powers always were constitutionally entitled to bind territories, for the conduct of whose foreign affairs they are responsible, by international agreements, or to adopt legislation applicable to such territories, objections could hardly be raised against the inclusion in a convention on freedom of information of a clause similar to that devised for the Covenant on Human Rights. But it is not so. Some metropolitan powers can not accept obligations by which all territories under their control would be bound to apply certain standards with respect to their domestic information legislation. The United Kingdom, for instance, would not be able to ratify the convention until after consultation with all or most of the territories concerned, and the insertion of a clause like that included in article 16 might even prevent the United Kingdom itself from becoming party to the Convention. The Convention on the International Transmission of News includes a "colonial clause" (article XVIII) by which metropolitan powers undertake to take as soon as possible the necessary steps in order to extend the application of the convention to territories under their control. In view of the nature of the Convention on Freedom of Information and the desirability of making it applicable as soon as possible to as many States as possible, the same type of "colonial clause" might be preferable to the non-compromising clause included in article 16 of the UN draft convention.

F. THE IMPLEMENTATION CLAUSE

Article 12 of the UN draft Convention provides that "any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement".

The Covenants on Human Rights may establish a more extensive machinery for the settlement of disputes. The convention, however, must be implemented before this system has been brought into force. To refer disputes to the International Court is at present the normal method. It should be noted that disputes concerning the interpretation or application of the Convention on Freedom of Information would generally involve more than two States. Violations of the convention would normally not directly affect the interests of any specific contracting State, as the convention does not regulate conflicting international interests but concerns domestic law. If, for instance, the action taken in 1951 by the Argentine government against the Argentine newspaper "La Prensa" had occurred after the Convention on Freedom of Information had entered into force and Argentina had been a party to it, it seems probable that several countries would have joined in an action against the Argentine government before the International Court of Justice. The alternative of "negotiations" or "another mode of settlement" would hardly have seemed practical. The International Court would have had to give its verdict. It may be added that it would have had to study the question of whether the action taken was "necessary" for any cause enumerated in article 2 of the Convention and at the same time embodied in Argentine law, whether it was "applied in accordance with the law", and whether remedies to the courts had been made available. This imaginary "La Prensa case" seems to us to illustrate the *strength* of the complex of safeguards against abuse. It would not be easy even for dictators to achieve the suppression of media of information without colliding in one way or another with the provisions of the draft convention.

This fact, however, brings up another question. Would a convention revised as suggested be acceptable to a great number of countries? The UN draft convention has been accused of opening the door to abuse. Is it not possible that governments might object against a revised con-

vention because it would give the legislatures and the courts exclusive competence in all questions concerning freedom of information and would disregard the need for quick governmental action in certain cases relating for instance to national security, or would overlook the expediency of administrative regulation of certain matters? It is true that the emergency clause would provide for emergency measures, and temporary administrative measures pending the decisions of the courts would obviously not be prohibited. Yet, it might be possible that many governments would hesitate to oblige themselves to apply the rule of law within this field as a whole and to make their domestic application of the law subject to supervision by the International Court of Justice.

In the event of strong resistance against the draft Convention, the United Nations might formulate *a minimum program* for an international agreement in the field of freedom of information. The "rule of law" would not appear in the minimum program but only the other of the two classical principles of Press freedom, namely the prohibition of previous censorship. The interests of promoting freedom of information all over the world would be satisfied to some extent if a considerable number of governments were willing to adopt, sign, ratify, and bring into effect an agreement, the single substantive article of which read as follows:

> "Previous censorship in peacetime of written and printed matter shall not exist."

Such an agreement would have the advantage of not causing any really serious difficulties with respect to the task of interpretation and implementation given to the International Court Justice.

The UN draft convention would obviously, even in the revised form suggested in the present chapter, not be easily interpreted. The difficulties should, however, not be overemphasised. In any given country only a few individuals commit crimes. States may not be governed by the same moral inhibitions which make individuals law-abiding and give the internal law its binding force; in international affairs no machinery is in force which deserves comparison to the unfailing sword of the Goddess of Justice whom we see represented in court-houses all over the world. But there is in precisely drafted international conventions to which a considerable number of countries have become parties a certain convincing power which makes their provisions observed. The situation is different when the text of a convention is so broad or

unclear that a series of international judicial decisions are needed to explain the nature and meaning of the obligations undertaken.

It should be mentioned before leaving the problem of implementation that the task of the International Court of Justice might be facilitated by the establishment of a fact-finding commission, empowered to hear evidence in the case of alleged violations of the Convention and to try to settle by conciliation, where practical, disputes which occur. Such provisions were included in the "draft of a Treaty on Freedom of Information" which was submitted in 1947 to the Department of State of the Government of the United States of America by Richard J. Finnegan.[1] They were, however, omitted in the draft Convention on the Gathering and International Transmission of News which was presented by the United States to the Conference on Freedom of Information, and the Convention on the International Transmission of News and the Right of Correction does not include any provisions for a fact-finding commission. If governments, in dealing with the draft Convention on Freedom of Information, should decide to establish such a commission as part of the machinery for implementing that convention, it seems reasonable to extend its terms of reference to disputes arising out of alleged violations also of the Convention on the International Transmission of News. It is recalled that article XXI of that convention includes a provision for its revision.

G. SUMMARY

In the previous section of this chapter we presented *a minimum program* for an international agreement, a convention which would include only one substantive provision, prohibiting censorship.

The foregoing discussion of the UN draft convention resulted in another and more ambitious program for a convention. It includes the following principles.

1. Article 1 contains an affirmative description of freedom of information. Contracting States oblige themselves to "guarantee by law" freedom of information. That means that they must determine, whether by statutes adopted by the legislatures, or by Common Law, the rights and obligations related to the exercise of freedom of information. Hereby, the rule of law would be internationally acknowledged and an important

[1] See *Department of State Publication 3687; International Organization and Conference Series III, 43*, p. 18.

publicity check on information legislation would be brought into function.

2. Contracting States would, of course, retain a certain freedom in legislating for the Press, film and radio, and certain restrictions would be permitted. The convention would, however, include effective safeguards against the lowering of the standard of freedom already achieved in any contracting State.

3. There would be a series of safeguards against the abusive use of restrictions:

(a) Previous censorship in peacetime with respect to the Press would be absolutely prohibited.

(b) Limitations would be permissible only for causes clearly defined by law, and where necessary with regard to matters specifically enumerated.

(c) The rule of law would apply also to the application of information legislation.

In the course of the discussion above suggestions were made concerning the redrafting of certain articles contained in the UN draft convention. The drafting suggestions merely were intended to illustrate the problems discussed. The various drafting suggestions are reproduced below together with the text of the corresponding clauses of the UN convention, as drafted by the special committee of the General Assembly. The so called formal or final clauses are not included in the following tabulation. Important divergences are italicised.

Suggested text	(Text of the UN draft Convention: see also Appendix p. 156)
Article 1.	*Article 1.*
Subject to the provisions of this Convention,	Subject to the provisions of this Convention,
(a) Each Contracting State shall *guarantee by law equally* to its own nationals and to such of the nationals of every other Contracting State as are lawfully within its territory, *without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,* freedom to seek, receive and impart informa-	(a) Each Contracting State shall *secure* to its own nationals, and to such of the nationals of every other Contracting State as are lawfully within its territory, freedom to seek, receive and impart *without governmental interference and regardless of frontiers* information and opinions orally, in writing or in print, in the form of art or by *duly licensed visual or auditory devices;*

tion and *ideas of all kinds* either orally, in writing or in print, in the form of art, or *through any other media of his choice.*

(b) *The rights and obligations relating to the exercise of the freedom to seek, receive and impart information shall be determined by law.*

Article 2.

(a) The exercise of the freedoms referred to in Article 1 carries with it duties and responsibilities. Each Contracting State may therefore subject it to limitations *for causes* which have been clearly defined by law, but only to such as *are in force in its territory at the date when it ratifies this Convention,* and are necessary with regard to:

(i) The protection of national security;

(ii) Expressions which *violate regulations governing international law and order,* or which incite persons to alter by violence the system of government, or which promote disorder;

(iii) Expressions which incite persons to commit criminal acts.

(iv) Expressions which are obscene or which are dangerous for youth and intended for them;

(v) Expressions which are injurious to the fair conduct of legal proceedings;

(vi) Expressions which infringe literary or artistic rights;

(vii) Expressions about other persons, natural or legal, which defame their reputations;

(b) *No Contracting State shall regulate or control the use or availability of any of the means of communication referred to in the preceding paragraph in any manner discriminating against any of its own nationals or the nationals of any other Contracting State as are lawfully within its territory on political grounds or on the basis of their race, sex, language or religion.*

Article 2.

The exercise of the freedoms referred to in article 1 carries with it duties and responsibilities. It may therefore be subject to limitations, but only to such as are clearly defined by law; applied in accordance with the law and necessary with regard to:

(a) The protection of national security;

(b) Expressions which incite persons to alter by violence the system of government or which promote disorder;

(c) Expressions which incite persons to commit criminal acts;

(d) Expressions which are obscene or which are dangerous for youth and intended for them;

(e) Expressions which are injurious to the fair conduct of legal proceedings;

(f) Expressions which infringe literary or artistic rights;

(g) Expressions about other persons, natural or legal, which defame their reputations;

(h) Legal obligations resulting from professional, contractual or other legal relationships including disclosure of information received

(viii) Legal obligations resulting from professional, contractual or other legal relationships including disclosure of information received in confidence in a professional or official capacity;

(ix) The prevention of fraud; or

(x) *Expressions which ridicule, insult or threaten any person or group of persons on account of nationality, race, sex, language, religion or social origin, or which affront national symbols or offend religious feelings.*

(b) Limitations must be applied in accordance with the law. *Any dispute concerning the interpretation or application of limitations shall be settled by the courts. Any criminal charge against any person concerning the violation of rules of law which limit the exercise of freedom of information, shall be determined by the courts.*

Article 3.

A Contracting State may establish a right of reply or a similar corrective remedy.

Article 4.

Any form of censorship constitutes a curtailment of the freedoms referred to in Article 1. Each Contracting State shall therefore:

(a) *Refrain from imposing previous censorship in peacetime on printed matter;*

(b) *Take the necessary steps to promote the progressive abolition of censorship on broadcasts and films within its territory.*

Article 5.

Nothing in the present Convention may be interpreted as limiting or derogating from any of the rights and freedoms to which the present

in confidence in a professional or official capacity; or

(i) The prevention of fraud.

Article 4.

A Contracting State may establish a right of reply or a similar corrective remedy.

Article 3.

Nothing in the present Convention may be interpreted as limiting or derogating from any of the rights and freedoms to which the present

Convention refers which may be guaranteed under the laws of any Contracting State or any Conventions to which it is a party.

Article 6.

No Contracting State shall interfere with the establishment and functioning within its territory of one or more non-official organizations of persons employed in the dissemination of information to the public.

Convention refers which may be guaranteed under the laws of any Contracting State or any Convention to which it is a party.

Article 5.

Each Contracting State shall encourage the establishment and functioning within its territory of one or more non-official organizations of persons employed in the dissemination of information and opinions to the public; *so that such persons may thus be encouraged to observe high standards or professional conduct and, in particular, the moral obligation to report facts without prejudice and in their proper context and to make comments without malicious intent, and thereby to:*

(a) *Facilitate the solution of the economic, social and humanitarian problems of the world as a whole, by the free exchange of information bearing on them;*

(b) *Help to promote respect for human rights and fundamental freedoms without discrimination;*

(c) *Counteract the dissemination of false or distorted reports which offend the national dignity of peoples or promote hatred or prejudice against other States, or against persons or groups of different race, language, religion or philosophical conviction; or*

(e) *Combat any form of propaganda for war.*

Article 7.

Nothing in the present Convention shall prevent a Contracting State from reserving under its legislation:

(a) to its own nationals the right

Article 8.

Nothing in the present Convention shall prevent a Contracting State from reserving under its legislation to its own nationals the right to edit newspapers or news periodi-

to edit newspapers or news periodical within its territory[1]; or

(b) to its own nationals *or to one or several licensees only*, the right to own and operate telecommunication facilities, including radio broadcasting and television stations, within its territory.

Article 8.

Nothing in the present convention shall affect the right of any Contracting Party to take measures *which are necessary:* in order:

(a) To develop and protect its national news enterprises until such time as they are fully developed;

(b) To prevent restrictive or monopolistic practices or agreements in restraint of the free flow of information and opinions;

(c) To control international broadcasting originating within its territory.

Article 9.

Nothing in the present Convention shall affect the right of any Contracting State to take measures *which are necessary* in order to safeguard its external financial position and balance of payments.

cals produced within its territory, or the right to own or operate telecommunication facilities including radio broadcasting stations, within its territory.

Article 7.

Nothing in the present Convention shall affect the right of any Contracting State to take measures *which it deems necessary* in order:

(a) To develop and protect its national news enterprises until such time as they are fully developed;

(b) To prevent restrictive or monopolistic practices or agreements in restraint of the free flow of information and opinions;

(c) To control international broadcasting originating within its territory; *provided that such measures may not be used as a means of preventing the entry, movement or residence of nationals of other Contracting States engaged in the gathering and transmission of information and opinions for dissemination to the public.*

Article 6.

Nothing in the present Convention shall affect the right of any Contracting State to take measures *which it deems necessary* in order to safeguard its external financial position and balance of payments.

[1] Governments may wish to include a similar provision with regard to film producing and cinema enterprises.

Chapter V

The World Constitutional Aspect

It is possible to outline without going into the niceties of comparative constitutional law, some common features of the so-called sovereign State. A legislature makes the laws and courts apply them. An executive power is in charge of executing the decisions taken by the legislature and the verdicts delivered by the courts. "The executive", however, has generally a power of its own including functions outside execution in a narrow sense. It "governs" or "reigns" or "rules". Its business is carried out by Ministries or Departments of government. Besides such central organs of government there are various agencies which deal with the multiplicity of matters belonging to the administration of a modern State. Administrative agencies may be more or less independent of the executive proper. Generally, however, they are not acting directly under the terms of the Constitution but receive their powers by delegation from the executive or the legislature. We meet within the sovereign State also the Law, a system of rules supposed to bind not only government officials and the citizens but also the executive, the legislature and the courts. In some countries the law is said to be based on the Constitution; in others, the Constitution is said to be based on the law. In all countries, the "binding" power of the law is the result of the interdependence of the lawabidingness of the citizens and the government machinery of compulsion.

International society can not be represented by this picture. The world community is still unorganized and, strictly speaking, lawless. For hundreds of years, however, step after step has been taken in order to transform the society of sovereign States into a community of nations, governed by law.

The Charter of the United Nations is an intergovernmental instrument by which the vast majority of States have agreed to establish certain organs (the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council). These organs have all quasi-legislative and quasi-executive functions. They can not, however, make laws binding upon the Member States, and their power of coërcion is extremely limited. The International Court of Justice functions similarly to national courts but there are no law-enforcing officers who bring the

parties *nolens volens* before the court and see to it that the warrants and verdicts of the court be executed. The development of international society follows, however, a pattern of its own. While administration other than that related to public order comes last in municipal development, in international society administrative agencies have been created by the spur of necessity and contribute substantially to the integration of the world community by providing for co-operation in wide fields. Such organs as the International Labour Office or the International Bureau of the Universal Postal Union or the Secretariat of the United Nations are less defective as compared to national administrative agencies than are the more conspicuous organs of the United Nations as compared to national executives, legislatures and courts.

The Charter of the United Nations and other international instruments belonging to the United Nations system lay down the nucleus of a World Constitution in organizational matters. They do not create a world government but if the United Nations succeeds the result must in the course of time be something like it. It is certainly naïve to believe that a world government can be created overnight and it is unwise to try to undermine the efforts of the United Nations because of its comparatively modest aims. The distant aim is, in any case, the integration of the world. It must be recalled, however, that this aim is regarded as futile by those observers who claim that the world must go back to the old system of alliances[1]; that nothing more is needed if independents governments can be trusted to keep their solemnly pledged word.[2]

Organizational novelties alone would not create an integrated world society. Such a society requires mutual understanding among the individuals of all peoples and nations and loyalty on their parts towards their new and common fatherland. Such understanding and such loyalty can be based only on equality. Social and economic conditions of all world citizens must be equal enough to form the basis of a common loyalty, and there must be "human rights" for all.

Among the purposes of the United Nations, enumerated in Article 1 of the Charter is: "... To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." By Article 56 of the Charter "all Members pledge

[1] Cp. Eugene P. Chase, *The United Nations in Action*. New York, 1950, p. 377 ff.

[2] H. A. Smith, *The Crisis in the Law of Nations*. London, 1947, p. 31.

themselves to take joint and separate action in co-operation with the Organization for the achievement of the purpose set forth in Article 55". That Article states that "conditions of stability and well-being . . . are necessary for peaceful and friendly relations based on respect for the principle of equal rights and self-determination of peoples"; with a view to the creation of such principles, the United Nations shall promote, *inter alia*, higher standards of living, economic and social progress, and universal respect for, and observance of, human rights and fundamental freedoms.

The United Nations has taken broad action under those provisions. The program of technical assistance is aimed directly at the promotion of economic progress and development. The clauses aiming at the universal respect for, and observance of, human rights and fundamental freedoms has resulted in the adoption by the General Assembly on 7 December 1948 of the Universal Declaration of Human Rights. International Covenants on Human Rights are under preparation. Among the fundamental freedoms is freedom of information. In fact, this freedom is more than fundamental. It is, according to the General Assembly, "the touchstone of all freedoms to which the United Nations is consecrated".

The Universal Declaration presents itself as "a common standard of achievement for all peoples and all nations". It was proclaimed by the General Assembly "to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction."

It enunciates comprehensively the rights of man and binds the United Nations as an organization. Its political influence is increasingly noticeable and it serves as a weapon for all who struggle for human rights. International agreements sponsored by the United Nations and concerned with problems in the field of freedom of information could not disregard article 19 of the Declaration, which states that "everyone has the right to freedom of opinion and expression" and that "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". Recent national legislation and judicial decisions of a number of countries refer to the Declaration. The effort to achieve a common stand-

ard of national law in the field of freedom of information may, therefore, be helped by the moral influence of the Declaration. It serves immediate aims as well as distant ones.

Most constitutions include a "Bill of Rights" or a similar enumeration of the rights (and, sometimes, also the duties) of citizens. The Universal Declaration of Human Rights does not form part of a world constitution. It can at most be described as the historical preamble to a "Bill of Rights" for the world community. This "Bill of Rights" would be constituted by the International Covenant on Human Rights, drafted as a binding intergovernmental agreement. It is, in this context, irrelevant whether the Covenant would take the form of only one or of several separate international instruments.

The draft Convention on Freedom of Information is aimed at achieving a common standard of national law in the field of freedom of information. Contracting States would assume certain obligations with respect to their domestic legislation, and would be entitled to take action against alleged violations of the convention. But the convention would not entitle individuals, claiming that they had been denied any of the freedoms affirmed by the convention, to appeal against the government of their country. The convention purports to legislate for all nations or at least a large number of nations. But it does not legislate for the world as an integrated community. The draft International Covenant on Human Rights, on the other hand, would do so. It is true that a Covenant can be drafted in such a way that the responsibilities of contracting States would relate only to each other; in such a case the individual would not derive any rights of his own. To some people such a Covenant would represent the possible maximum of international co-operation in the field of human rights and it is quite possible that the United Nations will be unable to achieve anything more. Some recent plans with respect to the machinery for implementing the Covenant are the result of consistent opposition from a series of countries against any international machinery which would interfere with "domestic jurisdiction". Their reasons are open to various interpretations. It is a fact, however, that the protection of the individuals would certainly be inadequate if they were denied the right of redress.[1] The complete denial of individual rights of action or petition would compromise any program aiming at realizing what the Preamble of the Universal Declaration describes as "the equal and inalienable right of all

[1] See Drost, *op. cit.*, p. 23 f, 58 f, 65 ff, 97 ff. Cp. H. Lauterpacht, *International Law and Human Rights*, New York, 1950, p. 287 ff.

members of the human family", rights to which according to article 2 of the Declaration *everyone* is entitled. In discussing the draft Covenant on Human Rights in this context, it is therefore, taken for granted that it will in some way provide for individual rights.

The introduction of a system for implementing human rights which gives to the individuals in all countries which become parties to the Covenant the right of international redress would mean a revolution in international affairs. The consideration of the machinery of implementation is for that reason not primarily a problem of drafting. Neither can the impact of an article concerning freedom of information, contained in an International Covenant on Human Rights, be predicted until the main political and legal problems related to it have been solved or at least rendered less obscure. There is no need, therefore, to dwell here upon questions relating to the text of such an article. Some consideration should however be given to the relationship of a Convention on Freedom of Information to the Covenant, should such an instrument be adopted.

Would the convention loose its importance after the adoption of the Covenant? The answer must be no, if it is assumed that some time would elapse between the adoption of the Covenant and its realization by means of the development of an interpretative jurisprudence. The convention would be important as it obliges contracting States to guarantee, within their territories, a certain legal standard concerning freedom of information while the guarantees provided for by the relevant articles in the Covenant, including those concerning the machinery of implementation, are still in a stage of growth. It is also possible that international judicial decisions would not establish as part of the rights conferred by the Covenant on all individuals, all the freedoms or all aspects of the freedoms affirmed by the convention, and, as a consequence, the convention would retain its importance. Article 10 of the UN draft Convention provides for the solution of possible conflicts between the Covenant and the convention; the instruments shall be regarded as complementary and neither shall narrow the effect of the other. In any case of incompatibility the provisions of the Covenant shall prevail. This clause seems to imply that if the concept of freedom of information under the terms of the convention is wider than under the Covenant, the individual rights conferred by the Covenant on all human beings, would be interpreted in accordance with the concept formulated in the convention at least with respect to the nationals of such countries as have become parties to the conven-

tion. If, on the other hand, the concept of freedom enunciated by the Covenant is wider, the states parties to the convention have agreed to apply, if they become parties to the Covenant, the wider concept contained therein. It is doubtful whether this provision in the draft Convention really solves all possible conflicts between the two instruments. It would probably become necessary to include in the Covenant or in a protocol attached to it detailed provisions for settling a series of difficult problems concerning its relationship to existing intergovernmental agreements, particularly if the covenant, as assumed, would confer upon the individuals of the contracting states a right to redress.

If we are far away from the super-state with a world government where the Covenant on Human Rights would play the *rôle* of a universal "Bill of Rights", implemented by lawenforcing officers and independent courts, we must not forget that the existing imperfect society of nations has many common concerns. The international society of today needs close cooperation between States, for many purposes, and effective means of settling disputes. The United Nations acts in the interest not only of individual States but of international society as a whole when sponsoring international agreements such as the conventions on the international transmission of news and on the right of correction, or the UNESCO agreements dealt with above which tend to remove obstacles to the free intercourse between nations. The first task of international society is, however, to maintain peace and to prevent international disorder which might lead to a breach of the peace. This task is not unrelated to the problems which concern freedom of information. The free and abundant flow of true information strengthens the forces of peace. But what about false or distorted information, and propaganda which incites to war or to a breach of the peace?

Chapter VI

International Order and Security

The need for counteracting false or distorted reports which undermine friendly relations between States and war propaganda in general has been repeatedly recognized by organs of the United Nations. In 1947, the General Assembly unanimously adopted two resolutions on the subject. One of them concerned "measures to be taken against propaganda and the inciters of a new war"; it requested governments to take steps "to encourage the dissemination of all information designed to give expression to the undoubted desire of all peoples for peace". The other invited governments "to study such measures as might be taken on the national plane to combat the diffusion of false or distorted reports likely to injure friendly relations between States". Likewise unanimously, the United Nations Conference on Freedom of Information adopted two resolutions on the subject. The first of them endorsed the two resolutions of the General Assembly and declared contrary to the purposes of the United Nations, "the spreading of false and distorted reports" and "propaganda which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of agression". It also declared that such reports and such propaganda "constitute a problem of the first importance calling for urgent corrective action on the national and international planes".[1]

In spite of the solemn language used in all these resolutions and the support given them by all Member States, little if anything at all has been done by the United Nations with respect to this problem. The General Assembly invited governments to study such measures as might be taken on the national plane. The Conference recommended "that all countries take within their respective territories the measures which they consider necessary to give effect to" its resolution, and that they promptly inform the Secretary-General of any measures taken. At the same time, many countries which subscribed to the resolutions mentioned, in considering the draft Convention on Freedom of Information, objected strongly to a clause which would permit such countries as have taken legislative ac-

[1] See also resolution E on freedom of information adopted by the General Assembly on 16 December 1952.

tion to combat false reports to retain their legislation to this effect. In other words, governments should be forbidden for instance to make the spreading of false or distorted reports which injure friendly relations between States a punishable offense. It should be recalled that legislation which directly aims at the prevention of war propaganda exists only in a limited number of countries.[1] Most legislation which includes provisions against false or distorted reports concerns reports which disturb "public order" or endanger the security of the country (e.g. France, Guatemala, Norway, Sweden).[2] Emphasis is put on the protection of the *internal* rather than the international order and security.

What other kinds of measures could be chosen to combat war propaganda? The Conference obviously hoped that the Press and other media of information would make it their concern to ensure the impartial prepresentation of news and opinions in order to combat war propaganda. Its resolution:

> "*Appeals* vigorously to the personnel of the Press and other agencies of information of all countries of the world, and to those responsible for their activities, to serve the aims of friendship, understanding and peace by accomplishing their task in a spirit of accuracy, fairness and responsibility;

and it:

> "*Expresses* its profound conviction that only organs of information in all countries of the world that are free to seek and to disseminate the truth, and thus to carry out their responsibility to the people, can greatly contribute to the counteracting of nazi, fascist and any other propaganda of aggression or of racial, national and religious discrimination and to the prevention of recurrence of nazi, fascist, or any other aggression."

In some countries the authorities may claim that the Press and other information media have fargoing "responsibilities to the people" which make it one of their duties to "counteract propaganda of aggression". In other countries, however, the journalistic profession and also the

[1] Most communist countries have adopted "peace defence acts", declaring "war propaganda" a crime. The text of the USSR act of 12 March 1951 is reproduced in *Soviet Literary Monthly*, No. 5, 1951, p. 3 ff.

[2] An exception is the Cuban Code of Social Defence of 1938, which penalizes the spreading by means of the Press on the radio of "false reports . . . for the purpose of disturbing international peace or the good relations of the Republic with any other nation". See *UN doc. E/2046/ Add. 1*, p. 20.

public do not share such an opinion. The Press is not supposed, in these countries, to take over responsibilities which should rest with the governments. Any set of journalistic canons should deal only with such matters as the profession itself regards as important, namely purely professional matters. Moreover, it has been said that the Press "has but a single function and that is to gather and disseminate information".[1] This would mean that if some news or opinions are dangerous and their effects have to be "counteracted" in the interests of public order or welfare, this is no more the concern of the Press than the problem of finding remedies against alcoholism or to prevent drunken driving is the concern of a liquor dealer.

It could be added that codes of ethics and similar measures on the professional level would probably not be of any real value as a weapon against war propaganda. Actions of individual journalists or of individual media can in most cases be overlooked as relatively innocent. It is the concerto of all media together that counts. Conformity is the danger. If all the various media of information arrive at a certain degree of conformity with respect to the opinions expressed and the news presented, they may, some day, all blow the war trumpet. The most striking example is still the propaganda activities of the Hitler *régime* in Germany, based on the *Schriftleitergesetz* of 1933 which made the journalistic profession legally responsible to the Minister of Propaganda. A few years later the German Press as a whole had been streamlined into the most dangerous threat to the peace and welfare of all nations.

The resistance on the part of the journalistic profession to being involved in any governmental or intergovernmental scheme for counteracting war propaganda must be understood. After all it is not, within a State, the concern of the Press to take action against incitement to crime or attempts to disturb public order or threaten national security. The responsibility for the maintenance of peace, order and public welfare belongs to the official authorities. Just as they might prevent the liquor dealer from doing business with minors, they may take action against obscene publications dangerous for youth. They may also interfere with written matter in order to protect the State against internal disorder. In no State is legal action taken against the Press or any other media of information in order to protect the State against internal disorder or the dissemination of obscenity regarded as in principle unconstitutional or unlawful, and nobody would suggest that problems of counteracting propaganda inciting to crime or violence or obscene literature should be

[1] Elisha Hanson in *American Bar Association Journal*, 1951, p. 418.

regarded merely as a problem of professional ethics among journalists or other persons engaged in the dissemination of information. The problem presents itself in a similar way to the international society. It is, as stated in article 1 of the Charter of the United Nations, of vital interest to all nations that international peace and security be maintained and effective action be taken for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace. The existing system of collective security as set out in the Charter is deficient in comparison with internal safeguards of peace and order. It has been successfully used to prevent the outbreak of war, or to make peace in certain areas of the world. The United Nations has also taken armed action to meet aggression in Korea. But international society still wants means of combatting effectively activities comparable to such domestic offenses as incitement to crime and violence, and also such activities as from the international point of view are subversive as they threaten a world order based on peace and legality.

In trying to devise such means the international society faces the same problem as has been met within the states, namely how "a free people can protect their security without at the same time destroying their own liberties".[1] Some organs of the United Nations are working on the problem. The International Law Commission has drafted a "Code of Offences against the Peace and Security of Mankind"[2] which includes besides such crimes as aggression, the "encouragement" by the authorities of a State of "activities calculated to foment civil strife in another State" and "direct incitement to commit any of the offences" defined in the Code. To some extent at least, the provisions of the Code would apply to propaganda for war or which threatens peace by supporting subversive activities in foreign countries. Moreover, the UN Committee on International Criminal Jurisdiction has dealt with the problem of the establishment

[1] The quoted words were used in describing the terms of reference of the United States "Commission on Internal Security and Individual Rights", appointed on 23 January 1951.

[2] See *UN doc. A/CN/4/48*, p. 31 ff. It should be noted that some types of propaganda and particularly subversive activities against foreign States are already regarded as contrary to international law. See L. Oppenheim, *International Law*, 6th ed., Vol. I, London 1947, p. 259 ff. The question was discussed during the sixth session of the General Assembly of the United Nations (Paris, 1951) to which the USSR government submitted a complaint of "aggressive acts of the United States of America". The discussion concerned the United States Mutual Security Act of 10 October 1951 and its application.

of an international criminal court for the trial of certain crimes against mankind.[1] Pending the realization of such fargoing programs the United Nations must operate through Member Governments and by means of such intergovernmental agreements as are feasible at the present time. This means that only such measures would be practical as may receive support from a considerable number of countries.

It has been possible to devise international measures against obscene publications. A first agreement was signed in Paris in 1910 and was followed, in 1923, by the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications which was opened for signature in Geneva on 12 September 1923.[2] On 20 October 1947 the General Assembly of the United Nations approved a Protocol by which the former functions of the League of Nations under the 1923 convention were to be performed by the United Nations.[3] The 1923 Convention provides that the contracting States take steps to punish persons who take any part in the circulation of and traffic in obscene publications of any kind. It also provides for international co-operation with respect to the prosecution of offenders. This may be a good procedure for the prevention of obscene publications. We have seen, however, that difficulties with respect to the definition of war propaganda, the possibility of abuse and other reasons, make many countries reluctant to take steps to punish persons engaged in such propaganda. Therefore, other means must be found. It seems encouraging, however, that so many nations, regardless of conflicting ideologies, have been willing to promote the interests of international society by joining in action against gutter literature.

One remedy against the evils of propaganda has already been devised, namely the international right of correction. This institution may develop into a useful weapon against false or distorted reports concerning foreign countries. But it is hardly sufficient. Additional means must be found. But what?

We are up against the same problem as reformers and legislators when discussing on the national level the performance of the Press. The per-

[1] See *UN doc. A/AC/48/4.*

[2] See *League of Nations Treaty Series*, Vol. XXVII, p. 213.

[3] By 24 July 1952 the following countries had become Parties to the Protocol: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Brazil, Burma, Canada, China, Czechoslovakia, Denmark, Egypt, Finland, Greece, Guatemala, Haiti, Hungary, India, Ireland, Italy, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Panama, Poland, Rumania, Turkey, the Union of South Africa, the USSR, the United Kingdom and Yugoslavia.

formance of the Press needs improvement; in some respects severe criticism has been raised against it. But the need for improvement should not be used as an argument for governmental interference. Therefore, the discussion on the national level has produced as a result the idea of establishing a "Council" or some other agency to appraise and report continuously on the performance of the Press. The Press may not like it, particularly not if the council or the agency were established by the government. But as the Press and other media of information are free to express from day to day their unadulterated opinion of the government, it is only reasonable to allow the government a corresponding freedom of expression. We are now dealing with action to be taken on the international plane against propaganda dangerous to international order and security. It seems impossible to devise, with respect to the Press, any other or better remedy against such propaganda than the establishment by intergovernmental agreement or by the United Nations, directly or through UNESCO, of an agency with the task of following the performance of the Press and other media of information and publishing its findings in an annual report. It should specifically pay attention to such reports and such practices as tend to disturb the peace or threaten international order and security. The only power of such an agency would consist in the publicity its report would attract depending upon its quality, and the possible reaction of the "consumers". A first effort to this effect is the appointment by the Economic and Social Council during its 14th session, 1952, of a special rapporteur on freedom of information. Another suggestion was made at the 1952 session of the General Assembly where the delegation of Honduras[1] proposed that an annual report on freedom of information in each of the States members of the United Nations be prepared for the purpose of drawing attention to the problems arising and noting the progress achieved in each region.

With regard to broadcasting and film more energetic action could be taken. False or distorted reports of an especially pernicious nature may be disseminated by newsreels. Pictures taken at different times and in different places may be combined in order to produce a desired effect; the accompanying text or spoken comment may be deliberately misleading. There is no reason why governments should not be able to agree on measures to prevent the circulation and presentation of falsified news by means of the cinema similar to those taken with respect to obscene publications.

[1] UN doc. A/AC. 3/L. 257/Rev. 2.

A "BROADCASTING NON-AGGRESSION PACT"

The gravest danger lies in the misuse of radio. In his opening address to the Inter-Governmental Conference of 1936 for the adoption of a convention concerning broadcasting and peace, the President, Mr. Arnold Raestad of Norway, stated that political broadcasting had "enormous potentialities as a means of fomenting international discord". He explained his point of view in the following words:

> "Broadcasts have no material substance, and therefore cannot be stopped at the frontiers; they can be directed towards any point in space; the political effects may be extensive and immediate; but they are not easy to foresee or to control or canalise at need. The underlying ideas of the draft convention are somewhat similar to those that induce governments to renounce the use of certain means of destruction, which, though indubitably effective, cannot be limited in their action to the real objective."[1]

In no less serious language another observer, Professor John B. Whitton of the United States of America, described 13 years later the potentialities of broadcasting. The two most dreadful inventions in history are, he claimed, the atom bomb and radio propaganda. To send across a frontier a subversive message was as harmful as to fire a cannon in the same direction.[2] Several organs of the League of Nations, including the Committee for Moral Disarmament of the Conference for the Reduction and Limitation of Armaments which opened in Geneva in February 1932, dealt with the problem. The final result was the International Convention Concerning the Use of Broadcasting in the Cause of Peace which was adopted in Geneva on 23 September 1936 and entered into force on 2 April 1938.[3] The Convention is still in force though hardly in operation. The following countries are parties to it: Australia, Brazil, Burma, Chile, Denmark, Egypt, El Salvador, Finland, France, India, Ireland, Luxembourg, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the Union of South Africa, and the United Kingdom.

Under the 1936 Convention the contracting parties undertook to pro-

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[1] John D. Tomlinson, *The International Control of Radiocommunications*. Genève, 1938, p. 229.

[2] John B. Whitton, La Propagande Internationale Instrument de Guerre ou de Paix, *Revue Général de Droit International Public*, 1949, p. 198.

[3] *UN doc. E/CN. 4/Sub. 1/104* contains a comprehensive study of the background of, and the various provisions in, the Convention.

hibit the broadcasting of transmissions of such a character as to incite to acts incompatible with the international order or the security of another contracting party. They also undertook to supervise transmissions originating within their territories with a view to preventing such from constituting an incitement to war or to acts likely to lead thereto. In order to counteract false or distorted reports they agreed to prohibit transmissions which through incorrect statements were likely to harm good international understanding, and to rectify such transmissions if they occurred. The convention also included provisions for utilizing broadcasting for promoting better mutual understanding between peoples. In order to give full effect to the obligations assumed, the contracting parties undertook to issue for the guidance of governmental broadcasting services appropriate instructions or regulations, and to take other appropriate measures (e.g. by legislation or licensing) with respect to autonomous broadcasting organizations, concessionary companies or private concerns. A special procedure for arbitration and conciliation was established; this procedure, however, is not available since the liquidation of the League of Nations and the International Committee on Intellectual Cooperation, the United Nations having failed to take any steps in order to assume the functions of the organs of the League of Nations in this respect.

It is, of course, important that an agreement which has the purpose of safeguarding international peace and security receive the broadest possible, preferably universal, application. In the days of "the cold war" any such agreement in order to be really effective must be supported by both the USSR and the United States of America. The United States, although invited to the 1936 conference did not take part in it, and the USSR although signing the Convention did not ratify it. These facts, however, do not constitute conclusive evidence to the effect that an agreement of this type could not be concluded between "the East" and "the West". A number of important countries which definitely belong to "the West" became parties to the 1936 convention, and in earlier days the USSR concluded several agreements with Western countries by which the parties agree mutually to curb unfriendly propaganda. The General Treaty between the USSR and the United Kingdom, for instance, signed in 1924, included such a clause which was renewed by an exchange of notes in 1929.[1] The contracting parties agreed "to refrain and to restrain all persons and organisations under their direct or indirect control, includ-

[1] See *British Parliamentary Papers, Treaty Series No. 2 (1930) Cmd. 3467.*

ing organisations in receipt of financial assistance from them, from any act overt or covert liable in any way whatsoever to endanger the tranquility or prosperity of any part of the territory of the British Empire or the Union of Soviet Socialist Republics, or intended to embitter the relations of the British Empire or the Union with their neighbours or any other countries". On the other hand, the possibility that a convention would not be subscribed to by all countries, should not be used as an argument against efforts to achieve it. An agreement might receive the support of a considerable number of countries and become what the makers of the 1936 convention strived at but did not achieve, namely "a broadcasting non-aggression pact". Besides such a pact, bilateral and regional agreements may well be concluded as supplementary measures. It should be recalled that such agreements already are in force, for instance the India-Pakistan treaties (see above p. 99) which concern all media, or the South American Regional Agreement on Radio Communications, signed at Rio de Janeiro in 1937 and revised in Santiago in 1940[1], which includes provisions for the prohibition of the broadcasting of false information or of "ideas which might threaten the sovereignty and integrity of States".

So far the efforts of the United Nations to achieve peace in the air have consisted in the adoption of resolutions. Obviously, any efforts to arrive at a "broadcasting non-aggression pact" presupposes careful consideration of the obligations to be undertaken by governments. Steps must also be taken to bring governments together in order to discuss the matter and find out whether there is a basis for agreement.

The dissemination of false or distorted reports which undermine friendly relations between peoples was one of the many items of the agenda of the 1948 Conference on Freedom of Information. As already said, the Conference was not able to do much about it. It should be recalled that before the Conference was held Prof. Whitton voiced the view that a special conference devoted solely to the question of pernicious propaganda would have been preferable.[2] His reasons were that propaganda is a problem *sui generis*, that radio differs from other means of communication, and that, as demonstrated by the years of study which preceded the 1936 conference on broadcasting and peace, the subject is one requiring the

[1] See Manley O. Hudson, *International Legislation*, Vol. VII, Washington D. C., 1941, p. 767, and Vol. VIII, Washington D. C., 1949, p. 447.

[2] John B. Whitton, Efforts to Curb Dangerous Propaganda. *The American Journal of International Law*, 1947, p. 901 ff.

most intensive preparation. He also felt that a limited conference would seem to have a greater chance of succeeding. The problem is not only still in existence; we are facing today a war in the air by means of propaganda and characterized also by increasing disorder with respect to the use of frequencies available and by jamming of certain broadcasts. There are serious reasons for considering the suggestion of calling a special intergovernmental conference with the task of preparing a world agreement on broadcasting.

Two main questions relate to such an agreement. Firstly, what kind of obligations can governments undertake without colliding with the principle of freedom of expression as guaranteed by the constitution or the laws of their countries? Secondly, what should be the substance of obligations undertaken? The two questions are, of course, interrelated.

In countries where broadcasting is the concern of the government or where broadcasting activities are carried out by public corporations or concessionary companies, having a monopoly and operating under conditions laid down by a specific charter, an agreement between the company and the government, or government regulations, any obligations undertaken by the government could be put into effect without serious difficulties. In countries, on the other hand, where the system of free enterprise is applied with regard to broadcasting activities and a series of competing licensed stations exist side by side, difficulties arise. In the United States of America, one of the few countries which apply that system but at the same time the most important of all countries in the field of broadcasting, the power of issuing licenses and supervising broadcasting activities which belongs to the Federal Communications Commission may not be construed as giving the Commission any power of censorship. It seems entirely unrealistic to assume that the United States would agree to make any exception from this principle. Under section 303 of The Communications Act, the Commission has the authority to suspend the license of any operator upon proof that the licensee has violated certain rules, including "any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer", or has transmitted communications "containing profane or obscene words, language, or meaning". It may be assumed that the United States would not become party to any convention by which the Federal Communications Commission would be bound to suspend licenses in the case of the dissemination of false or distorted reports injurious to friendly relations between peoples or States. It is true

that "profane or obscene words, language, or meaning" are prohibited. It seems possible that for instance defamation of foreign Heads of State could be added but hardly anything less precise. Under the circumstances, countries which apply the system of free enterprise must be given a privileged position in a convention, drafted at the present time and intended to be universalist in application. If the convention applied only to governmental broadcasting activities, including, of course, such international broadcasting services as the government-operated "Voice of America" and also services operating under a specific Charter or similar regulations, the most important operations would, however, be covered. An intergovernmental agreement under which the publicly owned American broadcasting stations and most of the other stations of the world would be bound by a certain standard of responsibility towards the common goal of preserving peace of all nations and all States, would represent a big achievement.

As to the substance of the obligations undertaken, the 1936 convention could serve as an example. No attempt should be made to outlaw "propaganda" as such. It is true that in the days of Hitler the word "propaganda" meant the dissemination *by improper means* of opinions and news. It is also true that the word propaganda suggests a certain resistance on the part of the consumer. A specific technique must be used in order to persuade him to accept the opinions propagated, and this approach might as such be regarded as an attempt to deprive the individual of his "unalienable" right to freedom of thought and freedom of opinion. But such reasoning is purely academic in our days; the techniques of persuasion constitute nowadays a respectable branch of science to which thoughts and opinions are physiological rather than intellectual phenomena. In counteracting propaganda a pragmatic approach must be applied. Only the most objectionable types of propaganda could be prohibited. They are, first of all, direct incitement to war or aggression; propaganda which is "subversive" by systematically aiming at disturbing the internal order in foreign countries; and defamatory propaganda. While the prohibition of direct war propaganda seems to be an attainable goal, and the technicians of propaganda themselves may agree that the dissemination of defamatory statements constitutes an inadequate and unadvisable method of propagation, the prohibition of "subversive" propaganda would, indeed, be comparable to an agreement to stop "the cold war". The drafting and conclusion of a "broadcasting non-aggression pact" require good will and a high degree of skill. The political implications are fargoing.

The increasing use of jamming and the threat of complete disorder with respect to the allocation and use of frequencies for international broadcasting, may, however, be an additional inducement to all countries to try to achieve an agreement. It should be added that some system of implementation must be devised besides the possible adjudication by the International Court of Justice of disputes relating to the interpretation or application of the Convention. A procedure similar to that of the 1936 Convention would provide for the settlement of disputes by conciliation or arbitration. The existence of such a procedure, useful in itself, would have the additional advantage of preventing countries from taking action of reprisal on the basis of alleged but not investigated or proved violations of the convention. It would also prevent countries from invoking the convention for the purpose of prohibiting the free dissemination of opinions and factual news by means of broadcasting. This is an extremely important point. A "broadcasting non-aggression pact" must not be construed as an instrument which prohibits *opinion* from being freely disseminated. Its main purpose must be to remedy abuse, in the form of incitement to violence or crime, subversive tactics, distortion and slander. Even opinion contrary to the philosophy of the United Nations must be let free. If not, the United Nations would itself have accepted the theory that media of information have as their main function to support and protect the existing social system by promoting certain policies, certain ideas, certain opinions, and not to serve the purpose of development and progress by free criticism and unhampered dissemination of news.

Chapter VII

Conclusions

This study has dealt with "freedom of information as a project of international legislation". We have, however, abstained from trying to define the term "international legislation". The approach has been pragmatic; we have discussed as "international legislation" various ways of laying down rules of law by means of international action which would affect the individuals in several countries or at least in more than one country. A few further words on the subject may be permitted, however, before the case is closed.

International lawyers when dealing with "international legislation" are inclined to state that as no international legislature exists, the term is in itself inadequate.[1] They may add that it is not void of all meaning. There are organisational developments in modern society, such as the creation of the United Nations, which make it possible to speak of quasi-legislative functions being carried out by international organs. The United Nations facilitates "international legislation", for instance by calling conferences for specific purposes or by trying to codify international law. Still such activities do not formally result in the adoption of acts or statutes binding upon the various States. The law-making function lies with the States themselves; they "legislate" among themselves by becoming parties to intergovernmental agreements.[2] Intergovernmental agreements are, moreover, not always regarded as "law-making". It has been said that "The very notion that international law requires any deliberate amendment is, indeed, quite a modern one"[3], and reference is frequently made to the fact that the doctrine of "domestic jurisdiction" or "the reserved domain" makes the range of international law extremely restricted.[4] In many cases the very reason for a treaty is to make an ex-

[1] Cp. J. L. Brierly, *The Law of Nations*, 4th ed. London, 1949, p. 87.

[2] Cp., however, Alf Ross, Is the Charter of the United Nations a Treaty or a Constitution? *Jus Gentium* 1949, p. 238 ff.

[3] Brierly, *loc. cit.*

[4] Reference must be made, however, to the brilliant though controversial study by Prof. Lauterpacht, *International Law and Human Rights*. International legislation aiming at safeguarding human rights and fundamental freedoms through a legally authorized and effective machinery of compulsion, would be a mere conse-

ception to a rule of general international law, not to create new law. "The only class of treaties which it is admissible to treat as a source of general law" are, according to Brierly, "those which a large number of States have concluded for the purpose either of declaring their understanding of what the law is on a particular subject, or of laying down a new general rule for future conduct, or of creating some international institution".[1]

In this study we have not tried to decide whether a convention on freedom of information would be a "law-making" treaty or not.[2] Such a convention operates evidently within the "reserved domain" as it directly concerns the domestic law of the contracting States. By this very fact, however, it intends to influence the law of many countries and to affect the rights and freedoms of individuals all over the world. It might very well be the nucleus of a development, the final result of which would be changes of international law. A similar importance may be attributed to conventions like the Convention on the International Transmission of News and the Right of Correction so far as they aim at laying down a *universal standard* for settling typical problems which cross international boundaries; at the same time it should be recalled that problems relating to immigration are regarded by the doctrine as definitely within the field of "domestic jurisdiction". As to the Covenant on Human Rights, its "law-making" qualities can not be denied, particularly if it creates an individual right of international redress and organizes an international machinery for implementing human rights. Still, the matters dealt with by the Covenant are clearly within what up to now have been regarded as domestic questions. It is evident, under these circumstances, that it would not have been possible to apply, for the purpose of this study, any established doctrine with respect to the proper use of the term "legislation" on the international level.

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quence of the legal obligations of States under international law as outlined in his study. It purports to show that the recognition and protection of human rights have assumed, under the Charter of the United Nations, the complexion of legal rights of the individuals and of legal obligations of States and of the United Nations as a whole. The significant provisions of the Charter are, according to Lauterpacht, "not an artificial innovation which is out of keeping with the essential purpose of international law, with the modern tendencies of its development, and with the sources from which it has drawn its vigour and its dignity." *Op. cit.*, p. 145.

[1] Brierly, *op. cit.*, p. 59.

[2] Cp. also the criticism of the doctrine of "lawmaking" treaties in Hans Kelsen, *Principles of International Law*, New York 1952, p. 319 f.

Three types of instruments have been discussed above as international legislation in the field of freedom of information, namely the Draft International Covenant on Human Rights, the Draft Convention on Freedom of Information, and other conventions. It should be added that some other activities also are close to what here, pragmatically, has been called international legislation in the field of freedom of information.

1. The Draft International Covenant on Human Rights.

The Covenant which may be given the form of two or more independent instruments is aimed at legislating on a universal basis with respect to all human rights including the right to freedom of information. The definition of this right in the draft Covenant is broad enough to allow varying interpretations, and the law of the Covenant must in this as in other respects be interpreted by practice, including judicial decisions. The impact of the Covenant or Covenants when finalized, adopted and entered into force would depend upon a series of facts which can not be foreseen at the present time, such as the function of the machinery of implementation and the political situation in general in the world.

The Covenant might, under favourable conditions, constitute one step towards a world government. In a new society of nations, organizing itself under the Charter of the United Nations and the Covenant on Human Rights as a world community, freedom of information would have an extremely important function as a check on the ruling bodies. This freedom, if upheld and respected, might provide for an autonomous world opinion which would express the views of the citizens of the world. Without freedom of information the world community would not be a democracy, and world government might become world tyranny.

If on the other hand the Covenant on Human Rights is given a less important *rôle* to play, individual rights of international redress being excluded from its system, a Convention on Freedom of Information becomes particularly important as supplementing and defining the obligations undertaken by States parties to the Covenant, with respect to freedom of information.

2. The Draft Convention on Freedom of Information.

This draft convention is a modest project compared with the Covenant. It is a project within the existing framework of international law. It would oblige the contracting States to adopt a certain standard of law with respect to freedom of information. The convention would be implemented by the legislatures or courts of the contracting States themselves

but its application would be subject to review by the International Court of Justice.

It would be useful, however, to supplement the machinery of implementation by an international "fact-finding commission" of some sort, which could make the necessary preliminary investigations of alleged violations of the convention and provide for settlement by negotiation, conciliation or arbitration. Such a commission might also be entrusted with similar functions under the Convention on the International Transmission of News, the Convention on the International Right of Correction, and under a "broadcasting non-aggression pact".

For countries where freedom of information is deficient, an international convention on freedom of information would play a *rôle* similar to that of a bill of rights. It would establish a minimum standard of freedom and pave the road for further steps to render freedom complete. Such a convention would on the other hand, not change the law of countries like France or the United States where freedom of information exists to the extent envisaged by it. Such countries may, however, benefit from the convention as it would facilitate intercourse between all countries by safeguarding freedom in many parts of the world. It should also be recalled that the adherence of a given country to a convention which establishes a minimum standard of freedom of information may constitute a prerequisite for any technical assistance or financial aid to that country, aimed at developing its media of information. It is certainly in the interests of the countries where freedom of opinion and freedom of expression are respected and upheld that the governments of countries which receive assistance or aid for the establishment of printing shops or radio stations or for the training of journalists and technicians use those grants as a means of promoting freedom of expression, and not of controlling and directing public opinion.

The difficulties in reaching agreement on the draft Convention on Freedom of Information relate mainly to questions of drafting. We have tried to explain that the controversial problems in drafting can be solved and that it would not be impossible to arrive at a text which would satisfy a vast majority of countries. That majority could, however, not include countries like the USSR, or fascist countries, where the political doctrines of "freedom of information" attribute to information media the specific function of protecting and supporting the existing social and political order.

It should be taken into account that the Convention, if adopted, might

acquire only a limited number of signatories immediately upon its opening for signature. As in the case of all international conventions, however, States may gradually become less hesitant to give their adherence.

If the draft Convention on Freedom of Information is not going to be finalized and opened for signature, the possibility remains of drafting a convention by which the contracting States assume the obligation not to apply previous censorship of written and printed matter in peacetime. This is a minimum program, indeed. Such a convention might, however, form a useful basis for further agreements on fundamental principles of freedom of information.

3. Other Conventions.

The conventions on the international transmission of news and on the international right of correction aim at laying down a common standard for solving some topical problems in the field of freedom of information. Each State must be supposed to have an immediate interest in facilitating the transmission of news across its frontiers, and to have available a remedy in cases where, in its opinion, a misrepresentation of facts has occurred which should be corrected. The scope of these conventions is limited, but when brought into operation they might become more generally appreciated. It should, moreover, be possible to amend the conventions in order to make them more efficient tools for promoting the free flow of true information.

We have also discussed a possible "broadcasting non-aggression pact" which would promote the interests of international society by protecting international order and security. A series of other problems which cross international boundaries may be the suitable subject of bilateral or multilateral conventions. It would seem possible to re-organize the existing system of bilateral and regional agreements for limited purposes, into conventions aiming at universal applicability. The efforts of UNESCO to facilitate by universal agreements the international circulation of educational, scientific and cultural materials, constitute important steps in this direction.

Intergovernmental agreements of the "conventional" type now discussed do not require that contracting States subscribe to the same or similar political ideologies. Only the tension in the world prevents for instance the USSR and the United States; Israel and Egypt; or Yugoslavia and Bulgaria, from concluding such agreements.

4. Other activities.

The elaboration of model legislation has been mentioned as an indi-

rect means of international "legislation". There are within the United Nations system other activities of a similar importance. When called upon to assist in settling problems relating to the creation of new States (Indonesia, Libya), the United Nations regards as one of its main concerns the establishment of guarantees of human rights and fundamental freedoms. The United Nations is also continuously in action for safeguarding human rights in trust territories and non-selfgoverning territories.

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The promotion of freedom of information on a world-wide level may be helped also by other means than international agreements and legislative measures. The United Nations activities for rendering technical assistance to underdeveloped countries are particularly important, the legal right to freedom of information being an empty word to people who do not have the facilities required.

The United Nations might also promote freedom of information by such means as the establishment of a continuing machinery to appraise the work of information media. There is, indeed, no more redoubtable enemy to freedom than the misuse of freedom. Declining quality of performance on the part of the Press and other media of information may result in serious doubts among the great public as to the value of the very principle of freedom of information.

Finally, it should be recognized that the Secretariat of the United Nations, UNESCO and such bodies as the newly created *International Press Institute* in Zürich render highly valuable service to the cause of freedom of information by studying problems of topical interest and by reporting on the results of their studies. The publication of objective and impartial studies made by experts helps the profession at large, media of information and the existing professional organizations, to decide to what extent and how they may attack and solve their common problems. Such studies also help to clarify to what extent and how governmental and intergovernmental action is needed or suitable for furthering the cause of freedom of information.

Appendix 1

Universal Declaration of Human Rights

Adopted by the General Assembly of the United Nations
on 10 December 1948.

Article 19. 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.

Appendix 2

Draft International Covenant on Civil and Political Rights

drafted by the Commission on Human Rights at its eighth session, 1952.

Article 16

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 the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights or reputations of others, (2) for the protection of national security or of public order, or of public health or morals.

Appendix 3

Convention on the International Transmission of News and the Right of Correction

Adopted by the General Assembly of the United Nations on 13 May 1949.

Preamble

The Contracting States,

Desiring to implement the right of their peoples to be fully and reliably informed,

Desiring to improve understanding between their peoples through the free flow of information and opinion,

Desiring thereby to protect mankind from the scourge of war, to prevent the recurrence of aggression from any source, and to combat all propaganda which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression,

Considering the danger to the maintenance of friendly relations between peoples and to the preservation of peace, arising from the publication of inaccurate reports,

Considering that at its second regular session the General Assembly of the United Nations recommended the adoption of measures designed to combat the dissemination of false or distorted reports likely to injure friendly relations between States,

Considering, however, that it is not at present practicable to institute, on the international level, a procedure for verifying the accuracy of a report which might lead to the imposition of penalties for the publication of false or distorted reports,

Considering, moreover, that to prevent the publication of reports of this nature or to reduce their pernicious effects, it is above all necessary to promote a wide circulation of news and to heighten the sense of responsibility of those regularly engaged in the dissemination of news,

Considering that an effective means to these ends is to give States directly affected by a report, which they consider false or distorted and which is disseminated by an information agency, the possibility of securing commensurate publicity for their corrections,

Considering that the legislation of certain States does not provide for a right of correction of which foreign Governments may avail themselves, and that it is therefore desirable to institute such a right on the international level, and

Having resolved to conclude a Convention for these purposes,

Have agreed as follows:

Article I

For the purposes of the present Convention:

1. "News material" means all news material, whether of information or opinion and whether visual or auditory, for dissemination to the public.

2. "News despatch" means news material transmitted in writing or by means of telecommunications, in the form customarily employed by information agencies in transmitting such news material, before publication, to newspapers, news periodicals and broadcasting organizations.

3. "Information agency" means a Press, broadcasting, film, television or facsimile organization, public or private, regularly engaged in the collection and dissemination of news material, created and organized under the laws and regulations of the Contracting State in which the central organization is domiciled and which, in each Contracting State where it operates, functions under the laws and regulations of that State.

4. "Correspondent" means a national of a Contracting State or an individual employed by an information agency of a Contracting State, who in either case is regularly engaged in the collection and the reporting of news material, and who when outside his State is identified as a correspondent by a valid passport or by a similar document internationally acceptable.

Gathering and International Transmission of News

Article II

In order to facilitate the freest possible movement of correspondents in the performance of their functions, the Contracting States shall expedite, in a manner consistent with their respective laws and regulations, the administrative procedures necessary for the entry into, residence in, travel through and egress from their respective territories of correspondents of other Contracting States together with their professional equipment, and shall not impose restrictions which discriminate against such correspondents with respect to entry into, residence in, travel through or egress from such territories.

Article III

The Contracting States, while recognizing that correspondents and information agencies must conform to the laws in force in the countries in which they are operating, agree that correspondents of other Contracting States legally admitted into their territories shall not be expelled on account of any lawful exercise of their right to collect and report news material.

Article IV

The present Convention shall not apply to any correspondent of a Contracting State who, while not otherwise admissible under the laws and regulations referred to in article II into the territory of another Contracting

State, is nevertheless admitted conditionally in accordance with an agreement between that other Contracting State and the United Nations or a specialized agency thereof, in order to cover their proceedings, or pursuant to a special arrangement made by that other Contracting State in order to facilitate the entry of such correspondents.

Article V

Each Contracting State shall, to the extent compatible with its national security, permit and facilitate access to news for all correspondents of other Contracting States so far as possible on the same basis as for the correspondents employed by its domestic information agencies, and shall not discriminate among correspondents of other Contracting States as regards such access.

Article VI

Correspondents and information agencies of a Contracting State operating in the territories of other Contracting States shall have access to all facilities in such territories generally and publicly used for the international transmission of news material and shall be accorded the right to transmit news material from each such territory on the same basis and at the same rates applicable to all users of such facilities for similar purposes.

Article VII

1. The Contracting States shall permit egress from their territories of all news material of correspondents and information agencies of other Contracting States without censorship, editing or delay; provided that each Contracting State may make and enforce regulations relating directly to national defence. Such of these regulations as relate to the transmission of news material shall be communicated by the State to all correspondents and information agencies of other Contracting States operating in its territory and shall apply equally to them.

2. If the requirements of national defence should compel a Contracting State to establish censorship in peace-time it shall:

(a) Establish in advance which categories of news material are subject to previous inspection; and communicate to correspondents and information agencies the directives of the censor setting forth forbidden matters;

(b) Carry out censorship as far as possible in the presence of the correspondent or a representative of the information agency concerned; and when censorship in the presence of the person concerned is not possible:

(i) Fix the time-limit allowed the censors for the return of the news material to the correspondent or information agency concerned;

(ii) Require the immediate return of news material submitted for censorship direct to the correspondent or information agency concerned, together with the marks indicating the portions thereof that have been deleted and any annotations;

(c) In the case of a telegram subjected to censorship:

(i) Base the charge on the number of words composing the telegram after censorship;

(ii) Return the charge, in accordance with the relevant provisions of the international telegraph regulations currently in force, provided that the sender has cancelled the telegram before its transmission.

Article VIII

1. Each Contracting State shall permit all news despatches of correspondents and information agencies of other Contracting States to enter its territory and reach information agencies operating therein on conditions which are not less favourable than those accorded to any correspondent or information agency of any other Contracting or non-Contracting State.

2. As regards the projection of newsreels or parts thereof, the Contracting State shall take measures to prevent monopolistic practices in any form, whether open or concealed, in order to avoid restrictions, exclusions or privileges of any kind.

International Right of Correction

(*Articles IX, X and XI are identical to Articles II, III and IV of the Convention on the International Right of Correction; see Appendix 4 below.*)

Miscellaneous Provisions

Article XII

1. Nothing in the present Convention shall be construed as depriving a Contracting State of its right to make and enforce laws and public regulations for the protection of national security and public order.

2. Nothing in the present Convention shall be construed as depriving any Contracting State of its right to make and enforce laws and public regulations prohibiting news material which is blasphemous or contrary to public morals or decency.

3. No Contracting State shall, however, impose censorship in peacetime on news material leaving its territory except on grounds of national defence, and then only in accordance with article VII.

4. Nothing in the present Convention shall be construed as prejudicing the adoption by a Contracting State of any legislation requiring that a portion of the staff employed by foreign enterprises operating in its territory shall be composed of nationals of that State.

5. Nothing in the present Convention shall be construed as preventing a Contracting State from taking measures to help the establishment and development of independent domestic information agencies or to prohibit practices tending to create monopolies.

6. Nothing in the present Convention shall limit the power of a Contracting State to reserve to its nationals the right to establish and direct in its territory newspapers, periodicals, and radio-broadcasting and television organizations.

7. Nothing in the present Convention shall be construed as limiting the discretion of a Contracting State to refuse entry into its territory to any particular person or to restrict the period of his residence therein; provided that any such refusal or restriction is based on grounds other than that such person is a correspondent, and that any such restriction as to residence does not conflict with the provisions of article III.

8. Nothing in the present Convention shall oblige a Contracting State to consider one of its own nationals employed by a foreign information agency operating in its territory as a correspondent, except when he is functioning on behalf of that information agency and then only to the extent required to enable that information agency fully to enjoy the benefits of this Convention; provided, however, that no provision of this Convention shall be construed as entitling another Contracting State to intercede on behalf of such national with his Government, as distinguished from interceding on behalf of the information agency by which he is employed.

Article XIII

1. In time of war or any other public emergency, a Contracting State may take measures derogating from its obligations under the present Convention to the extent strictly limited by the exigencies of the situation.

2. Any Contracting State availing itself of this right of derogation shall promptly inform the Secretary-General of the United Nations of the measures which it has thus adopted and of the reasons therefor, and shall also inform him as and when the measures cease to operate.

Article XIV

Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement.

Article XV

1. The present Convention shall be open for signature to all States Members of the United Nations, to every State invited to the United Nations Conference on Freedom of Information held at Geneva in 1948, and to every other State which the General Assembly may, by resolution declare to be eligible.

2. The present Convention shall be ratified by the States signatory hereto in conformity with their respective constitutional processes. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article XVI

1. The present Convention shall be open for accession to the States referred to in article XV (1).

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article XVII

When any six of the States referred to in article XV (1) have deposited their instruments of ratification or accession, the present Convention shall come into force among them on the thirtieth day after the date of the deposit of the sixth instrument of ratification or accession. It shall come into force for each State which ratifies or accedes after that date on the thirtieth day after the deposit of its instrument of ratification or accession.

Article XVIII

1. Any State may, at the time of signature or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that the present Convention shall extend to all or any of the territories for the international relations of which it is responsible. This Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the day of receipt by the Secretary-General of the United Nations of this notification.

2. Each Contracting State undertakes as soon as possible the necessary steps in order to extend the application of this Convention to such territories subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

3. The Secretary-General of the United Nations shall communicate the present Convention to the States referred to in article XV (1) for transmission to the responsible authorities of:

(a) Any Non-Self-Governing Territory administered by them;

(b) Any Trust Territory administered by them;

(c) Any other non-metropolitan territory for the international relations of which they are responsible.

Article XIX

1. Any Contracting State may denounce the present Convention by notification to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Any Contracting State which has made a declaration under article XVIII (1) may at any time thereafter, by notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory six months after the date of receipt of the notification by the Secretary-General.

Article XX

The present Convention shall cease to be in force as from the date when the denunciation which reduces the number of Parties to less than six becomes effective.

Article XXI

1. A request for the revision of the present Convention may be made at any time by any Contracting State by means of a notification to the Secretary-General of the United Nations.

2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XXII

The Secretary-General of the United Nations shall notify the States referred to in article XV (1) of the following:

(a) Information received in accordance with article XIII (2);

(b) Signatures, ratifications and accessions received in accordance with articles XV and XVI;

(c) The date upon which the present Convention comes into force in accordance with article XVII;

(d) Notifications received in accordance with article XVIII and article XIX (2);

(e) Denunciations received in accordance with article XIX (1);

(f) Abrogation in accordance with article XX;

(g) Notifications received in accordance with article XXI.

Article XXIII

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy to each State referred to in article XV (1).

3. The present Convention shall be registered with the Secretariat of the United Nations on the date of its coming into force.

Appendix 4

Convention on the International Right of Correction

Adopted by the General Assembly of the United Nations on 16 December 1952.

Preamble

The Contracting States,

Desiring to implement the right of their peoples to be fully and reliably informed,

Desiring to improve understanding between their peoples through the free flow fo information and opinion,

Desiring thereby to protect mankind from the scourge of war, to prevent the recurrence of aggression from any source, and to combat all propaganda which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression,

Considering the danger to the maintenance of friendly relations between peoples and to the preservation of peace, arising from the publication of inaccurate reports,

Considering that at its second regular session the General Assembly of the United Nations recommended the adoption of measures designed to combat the dissemination of false or distorted reports likely to injure friendly relations between States,

Considering, however, that it is not at present practicable to institute, on the international level, a procedure for verifying the accuracy of a report which might lead to the imposition of penalties for the publication of false or distorted reports,

Considering, moreover, that to prevent the publication of reports of this nature or to reduce their pernicious effects, it is above all necessary to promote a wide circulation of news and to heighten the sense of responsibility of those regularly engaged in the dissemination of news.

Considering that an effective means to these ends is to give States directly affected by a report, which they consider false or distorted and which is disseminated by an information agency, the possibility of securing commensurate publicity for their corrections,

Considering that the legislation of certain States does not provide for a right of correction of which foreign governments may avail themselves, and that it is therefore desirable to institute such a right on the international level, and *Having resolved* to conclude a Convention for these purposes, Have agreed as follows:

Article I

For the purposes of the present Convention:

1. "News despatch" means news material transmitted in writing or by means of telecommunications, in the form customarily employed by information agencies in transmitting such news material, before publication, to newspapers, news periodicals and broadcasting organizations.

2. "Information agency" means a Press, broadcasting, film, television or facsimile organization, public or private, regularly engaged in the collection and dissemination of news material, created and organized under the laws and regulations of the Contracting State in which the central organization is domiciled and which, in each Contracting State where it operates, functions under the laws and regulations of that State.

3. "Correspondent" means a national of a Contracting State or an individual employed by an information agency of a Contracting State, who in either case is regularly engaged in the collection and the reporting of news material, and who when outside his State is identified as a correspondent by a valid passport or by a similar document internationally acceptable.

Article II

1. Recognizing that the professional responsibility of correspondents and information agencies requires them to report facts without discrimination and in their proper context and thereby to promote respect for human rights and fundamental freedoms, to further international understanding and cooperation and to contribute to the maintenance of international peace and security,

Considering also that, as a matter of professional ethics, all correspondents and information agencies should, in the case of news despatches transmitted or published by them and which have been demonstrated to be false or distorted, follow the customary practice of transmitting through the same channels, or of publishing, corrections of such despatches,

The Contracting States agree that in cases where a Contracting State contends that a news despatch capable of injuring its relations with other States or its national prestige or dignity transmitted from one country to another by correspondents or information agencies of a Contracting or non-Contracting State and published or disseminated abroad is false or distorted, it may submit its version of the facts (hereinafter called "communiqué") to the Contracting States within whose territories such despatch has been published or disseminated. A copy of the communiqué shall be forwarded at the same time to the correspondent or information agency concerned to enable that correspondent or information agency to correct the news despatch in question.

2. A communiqué may be issued only with respect to news despatches and must be without comment or expression of opinion. It should not be longer than is necessary to correct the alleged inaccuracy or distortion and must be accompanied by a verbatim text of the despatch as published or

disseminated, and by evidence that the despatch has been transmitted from abroad by a correspondent or an information agency.

Article III

1. With the least possible delay and in any case not later than five clear days from the date of receiving a communiqué transmitted in accordance with provisions of article II, a Contracting State, whatever be its opinion concerning the facts in question, shall:

(a) Release the communiqué to the correspondents and information agencies operating in its territory through the channels customarily used for the release of news concerning international affairs for publication; and

(b) Transmit the communiqué to the headquarters of the information agency whose correspondent was responsible for originating the despatch in question, if such headquarters are within its territory.

2. In the event that a Contracting State does not discharge its obligation under this article with respect to the communiqué of another Contracting State, the latter may accord, on the basis of reciprocity, similar treatment to a communiqué thereafter submitted to it by the defaulting State.

Article IV

1. If any of the Contracting States to which a communiqué has been transmitted in accordance with article II fails to fulfil, within the prescribed time-limit, the obligations laid down in article III, the Contracting State exercising the right of correction may submit the said communiqué, together with a verbatim text of the despatch as published or disseminated, to the Secretary-General of the United Nations and shall at the same time notify the State complained against that it is doing so. The latter State may, within five clear days after receiving such notice, submit its comments to the Secretary-General, which shall relate only to the allegation that it has not discharged its obligations under article III.

2. The Secretary-General shall in any event, within ten clear days after receiving the communiqué, give appropriate publicity through the information channels at his disposal to the communiqué, together with the despatch and the comments, if any, submitted to him by the State complained against.

Article V

Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement.

Article VI

1. The present Convention shall be open for signature to all States Members of the United Nations, to every State invited to the United Nations

Conference on Freedom of Information held at Geneva in 1948, and to every other State which the General Assembly may, by resolution, declare to be eligible.

2. The present Convention shall be ratified by the States signatory hereto in conformity with their respective constitutional processes. The instruments of ratification shall be deposited with the Secretary General of the United Nations.

Article VII

1. The present Convention shall be open for accession to the States referred to in article VI (1).

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VIII

When any six of the States referred to in article VI (1) have deposited their instruments of ratification or accession, the present Convention shall come into force among them on the thirtieth day after the date of the deposit of the sixth instrument of ratification or accession. It shall come into force for each State which ratifies or accedes after that date on the thirtieth day after the deposit of its instrument of ratification or accession.

Article IX

The provisions of the present Convention shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they non-self-governing, trust or colonial territories, which are being administered or governed by such metropolitan State.

Article X

Any Contracting State may denounce the present Convention by notification to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

Article XI

The present Convention shall cease to be in force as from the date when the denunciation which reduces the number of Parties to less than six becomes effective.

Article XII

1. A request for the revision of the present Convention may be made at any time by any Contracting State by means of a notification to the Secretary-General of the United Nations.

2. The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XIII

The Secretary-General of the United Nations shall notify the States referred to in article VI (1) of the following:

(a) Signatures, ratifications and accessions received in accordance with articles VI and VII;

(b) The date upon which the present Convention comes into force in accordance with article XIII;

(c) Denunciations received in accordance with article X (1);

(d) Abrogation in accordance with article XI;

(e) Notifications received in accordance with article XII.

Article XIV

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy to each State referred to in article VI (1).

3. The present Convention shall be registered with the Secretariat of the United Nations on the date of its coming into force.

Appendix 5

Draft Convention on Freedom of Information

The Draft Convention on Freedom of Information originated in a draft resolution presented by the United Kingdom at the United Nations Conference on Freedom of Information. The Conference proposed the adoption of a Convention the text of which is to be found in its Final Act. At the second part of the third session of the General Assembly, the Third Committee redrafted articles 1—4 and voted favourably on the separate paragraphs of a redrafted article 5 but rejected the article as a whole. At its fifth session the General Assembly decided to set up the Committee on the Draft Convention on Freedom of Information. It prepared a preamble and 19 articles of a Draft Convention on Freedom of Information. The four texts mentioned above are reproduced below:

United Kingdom proposal (1948)	Conference text (1948)	Third Committee text (1949)	Text of the Committee on the Draft Convention on Freedom of Information (1951)
(1)	(2)	(3)	(4)
Preamble	*Preamble*	*Preamble*	*Preamble*
The States Parties to this Convention,	The States Parties to this Convention,	(The Preamble to the Draft Convention was not considered by the Third Committee)	The States Parties to this Convention,
Considering that the free interchange of information and opinions, both in the national and in the international sphere, is a fundamental human right and essential in the cause of peace and for the achievement of political, social and economic progress, and	Considering that the free interchange of information and opinions, both in the national and in the international sphere, is a fundamental human right and essential in the cause of peace and for the achievement of political, social and economic progress, and		Bearing in mind the Charter of the United Nations and the Universal Declaration of Human Rights;
Desiring to cooperate fully with one another to promote the peace and welfare of mankind by this means,	Desiring to cooperate fully with one another to promote the peace and welfare of mankind by this means,		Considering that freedom of expression and the free interchange of information and opinions, both in the national and in the international spheres, are fundamental human rights and essential in the cause of democracy and peace and for the achievement of political, social, cultural and economic progress;
Have accepted the following provisions:	Have accepted the following provisions:		

(1)	(2)	(3)	(4)
			(cont'd) Desiring to cooperate fully with one another to guarantee these freedoms and thereby to promote democratic institutions, friendly relations between States and peoples and the peace and welfare of mankind; and Recognizing that in order to achieve these aims the media of information should be free from pressure or dictation, and that these media by virtue of their power for influencing public opinion bear a great responsibility to the peoples of the world; Have accepted the following provisions:
Article 1	*Article 1*	*Article 1*	*Article 1*
Subject to the provisions of Articles 2, 3 and 4 of this Convention,	Subject ot the provision of Articles 2, 4, 5 and 6 of this Convention,	Subject to the further provision of this Convention,	Subject to the provisions of this Convention,
(a) each Contracting State shall secure to all its own nationals and to the nationals of every other Contracting State lawfully within its territory freedom to impart and receive information and opinions, orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices with-	(a) Each Contracting State shall secure to all its own nationals and to the nationals of every other Contracting State lawfully within its territory freedom to impart and receive information and opinions, orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices with-	(a) Each Contracting State shall secure to its own nationals and to such of the nationals of every other Contracting State as are lawfully within its territory freedom to receive and impart without governmental interference information and opinions regardless of frontiers, orally, in writing or in print, in the form of	(a) Each Contracting State shall secure to its own nationals, and to such of the nationals of every other Contracting State as are lawfully within its territory, freedom to seek, receive and impart without governmental interference and regardless of frontiers information and opinions orally, in writing or in print, in the

(1)	(2)	(3)	(4)
(cont'd) out governmental interference; (b) no Contracting State shall regulate or control the use or availability of any of the means of communication referred to in the preceding paragraph, in any manner discriminating against any of its own nationals or of the nationals of any other Contracting State on political or personal grounds or on the basis of race, sex, language or religion; (c) each Contracting State shall secure to all its own nationals and to the nationals of every other Contracting State, freedom to transmit information and opinions within its territories and across its frontiers by any legally operated means without governmental interference; (d) each Contracting State shall permit the nationals of other Contracting States not less freedom to seek information than it grants to its own nationals; (e) the Contracting States shall encourage	(cont'd) out governmental interference; (b) No Contracting State shall regulate or control the use or availability of any of the means of communication referred to in the preceding paragraph, in any manner discriminating against any of its own nationals or of the nationals of any other Contracting State on political or personal grounds or on the basis of race, sex, language or religion; (c) Each Contracting State shall secure to all its own nationals and to the nationals of every other Contracting State, freedom to transmit and listen to information and opinions within its territories and across its frontiers by any legally operated means without governmental interference; (d) Each Contracting State shall permit the nationals of other Contracting States as much freedom to seek information as it grants to its own nationals; (e) The Contracting States shall encourage	(cont'd) art, or by duly licensed visual or auditory devices; (b) No Contracting State shall regulate or control the use or availability of any of the means of communication referred to in the preceding paragraph, in any manner discriminating against any of its own nationals or of the nationals of any other Contracting State on political grounds or on the basis of their race, sex, language or religion; (c) Each Contracting State shall permit the nationals of other Contracting States as much freedom to seek information as it grants to its own nationals; (d) The Contracting States shall encourage	(cont'd) form of art or by duly licensed visual or audi tory devices; (b) No Contracting State shall regulate o control the use or avail ability of any of the means of communica tion referred to in the preceding paragraph in any manner discriminat ing against any of its own nationals or of the nationals of any othe Contracting State as are lawfully within its terri tory on political grounds or on the basis of thei race, sex, language o religion.

(1)	(2)	(3)	(4)
(cont'd) nd facilitate the in- erchange between their erritories of their na- ionals engaged in the athering of informa- ion and opinions for issemination to the ublic and shall deal xpeditiously with ap- lications by such per- ons to enter their ter- itories.	(cont'd) and facilitate the inter-change between their territories of those of their nationals engaged in the gathering of information and opinions for dissemination to the public and shall deal expeditiously with applications by such persons to enter their territories.	(cont'd) and facilitate the inter-change between their territories of those of their nationals engaged in the gathering of information and opinions for dissemination to the public and shall deal expeditiously with applications by such persons to enter their territories for the lawful exercise of their professional functions.	
Article 2	*Article 2*[1]	*Article 2*	*Article 2*
The freedoms referred o in paragraphs (a), c) and (d) of Article 1 nay be subject to nec- ssary restrictions, pen- lties and liabilities learly defined by law ut only with regard to	1. The freedoms referred to in paragraphs (a), (c) and (d) of Article 1 carry with them duties and responsibilities and may therefore be subject to necessary penalties, liabilities and restrictions clearly defined by law, but only with regard to:	The exercise of the freedom referred to in Article 1 carries with it duties and responsibilities and may therefore be subject to certain penalties, liabilities and restrictions clearly defined by law and necessary only in the interest of public order and national security; for the prevention of the diffusion of reports for racial, national or religious discrimination; for the prevention of disorder or crime; for the protection of public safety, health or morals, for the protection of the rights of other, natural or legal	The exercise of the freedoms referred to in Article 1 carries with it duties and responsibilities. It may therefore be subject to limitations, but only to such as are clearly defined by law; applied in accordance with the law and necessary with regard to:
(a) matters which nust remain secret in he interests of na- ional safety;	(a) Matters which must remain secret in the interest of national safety;		(a) The protection of national security;
(b) expressions which re intended or likely o incite persons to alter y violence the system f government;	(b) Expressions which incite persons to alter by violence the system of government or which promote disorder;		(b) Expressions which incite persons to alter by violence the system of government or which promote disorder;
(c) expressions which re intended or likely o promote disorder;	(c) Expressions which incite persons to commit criminal acts;		(c) Expressions which incite persons to commit criminal acts;

[1] Sub-paragraph (j) of Article 2 was inserted by the Conference on the proposal of the Delegation of ndia. It was deleted by the Committee on the Draft Convention on Freedom of Information by 7 votes 6 with 1 abstention. See also resolution A of the Committee and document E/2046 and Add. 1.

(1)	(2)	(3)	(4)
(cont'd)	(cont'd)	(cont'd)	(cont'd)
(d) expressions which are intended or likely to incite persons to commit criminal acts;	(d) Expressions which are obscene or which are dangerous for youth and expressed in publications intended for them;	persons; for preventing the disclosure of information received in confidence; for maintaining the fair administration of justice; for preventing the diffusion of false or distorted reports which undermine friendly relations between peoples or States; or for the removal of economic obstacles which may hamper the free dissemination of information.	(d) Expressions whic are obscene or whic are dangerous for yout and intended for them
(e) expressions which are obscene or blasphemous;	(e) Expressions which are injurious to the fair conduct of legal proceedings;		(e) Expressions whic are injurious to the fai conduct of legal pro ceedings;
(f) expressions made before legal proceedings are concluded which are injurious to the fair conduct of the proceedings;	(f) Expressions which infringe literary or artistic rights;		(f) Expressions whic infringe literary or ar tistic rights;
(g) expressions which infringe rights of literary and artistic property;	(g) Expressions about other persons, natural or legal, which defame their reputations or are otherwise injurious to them without benefiting the public;		(g) Expressions abou other persons, natura or legal, which defam their reputations;
(h) expressions about other persons which defame their reputations, or are otherwise injurious to them without benefiting the public.	(h) Legal obligations resulting from professional, contractual or other legal relationships including disclosure of information received in confidence in a professional or official capacity;		(h) Legal obligation resulting from profes sional, contractual o other legal relationship including disclosure o information received i confidence in a profes sional or official capac ity; or
	(i) The prevention of fraud;		(i) The preventio of fraud.
	(j) The systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples or States.		

(1)	(2)	(3)	(4)
			Article 3[1] (*New article*) Nothing in the present Convention may be interpreted as limiting or derogating from any of the rights and freedoms to which the present Convention refers which may be guaranteed under the laws of any Contracting State or any Conventions to which it is a party.
The liabilities and restrictions referred to in this Article may include, in relation to (h), an obligation on the printer or publisher of a defamatory expression to publish in a like manner a reply or corrective statement.	2. A Contracting State may establish on reasonable terms a right of reply or a similar corrective remedy.	*Article 3* A Contracting State may establish a right of reply or a similar corrective remedy.	*Article 4* A Contracting State may establish a right of reply or a similar corrective remedy.
	Article 3[2] Each Contracting State shall encourage the establishment and functioning within its territory of one or more non-official organizations of persons employed in the dissemination of information to the public, in order to promote the ob-	*Article 4* Each Contracting State shall favour the establishment and functioning within its territory of one or more non-official organizations of persons employed in the dissemination of information to the public, in order to promote the	*Article 5* Each Contracting State shall encourage the establishment and functioning within its territory of one or more non-official organizations of persons employed in the dissemination of information and opinions to the public; so that such persons may thus be

[1] This article was inserted by the Committee on the proposal of the Delegation of the United States of America.

[2] The insertion of this article originated in a proposal made at the Conference by the Delegation of India.

(1)	(2)	(3)	(4)
	(cont'd) servance by such persons of high standards of professional conduct, and in particular:	(cont'd) observance by such persons of high standards of professional conduct, and in particular the moral obligation to report facts without prejudice and in their proper context and to make comments without malicious intent, and thereby to:	(cont'd) encouraged to observe high standards of professional conduct and, in particular, the moral obligation to report facts without prejudice and in their proper context and to make comments without malicious intent, and thereby to:
	(a) To report facts without prejudice and in their proper context and to make comments without malicious intent;	(a) Facilitate the solution of the economic, social and humanitarian problems of the world as a whole, by the free exchange of information bearing on them;	(a) Facilitate the solution of the economic, social and humanitarian problems of the world as a whole, by the free exchange of information bearing on them;
	(b) To facilitate the solution of the economic, social and humanitarian problems of the world as a whole and the free interchange of information bearing on such problems;	(b) Help promote respect for human rights and fundamental freedoms without discrimination;	(b) Help to promote respect for human rights and fundamental freedoms without discrimination;
	(c) To help promote respect for human rights and fundamental freedoms without discrimination;	(c) Help maintain international peace and security;	(c) Help to maintain international peace and security;
	(d) To held maintain international peace and security;	(d) Counteract the spreading of false or distorted reports which promote hatred or prejudice against other States, or against persons or groups of different race, language, religion or philosophical conviction;	(d) Counteract the dissemination of false or distorted reports which offend the national dignity of peoples or promote hatred or prejudice against other States, or against persons or groups of different race, language, religion or philosophical conviction; or

(1)	(2)	(3)	(4)
	(cont'd) (e) To counteract the persistent spreading of false or distorted reports which promote hatred or prejudice against States, persons or groups of different race, language, religion or philosophical conviction.	(cont'd) (e) Combat any form of propaganda for war.	(cont'd) (e) Combat any form or propaganda for war.
Article 3 Nothing in the present Convention shall affect the right of any Contracting State to take measures which it deems necessary in order to bring its balance of payments into equilibrium.	*Article 4* Nothing in the present Convention shall affect the right of any Contracting State to take measures which it deems necessary in order: (a) To bring its balance of payments into equilibrium	*Article 5* Nothing in the present convention shall affect the right of any Contracting State to take measures: (a) Which it deems necessary to safeguard its external financial position and balance of payments; provided, however, that import restrictions imposed for this purpose are being applied more widely and not exclusively upon informational material;	*Article 6* Nothing in the present Convention shall affect the right of any Contracting State to take measures which it deems necessary in order to safeguard its external financial position and balance of payments. *Article 7* Nothing in the present Convention shall affect the right of any Contracting State to take measures which it deems necessary in order:

(1)	(2)	(3)	(4)
	(cont'd) (b)[1] To develop its nationals news enterprises until such time as such news enterprises are fully developed; (c)[1] To prevent agreements in restraint of the free flow of informations or the cartelization in regard to information; Provided that such measures may not be used as a means of preventing the entry of nationals of other Contracting States who are engaged in the gathering of information and opinions for dissemination to the public.	(cont'd) (b) To develop and protect its national news enterprises; (c) To prevent restrictive or monopolistic practices or agreements in restraint of the free flow of information; (d)[2] To control international broadcasting originating within its territory, provided that such measures may not be used as a means of preventing the entry, movement or residence of nationals of other Contracting States engaged in the gathering and transmission of information and opinions for dissemination to the public.	(cont'd) (a) To develop and protect its national news enterprises until such time as they are fully developed; (b) To prevent restrictive or monopolistic practices or agreements in restraint of the free flow of information and opinions; (c) To control international broadcasting originating within its territory; provided that such measures may not be used as a means of preventing the entry, movement or residence of nationals of other Contracting States engaged in the gathering and transmission of information and opinion for dissemination to the public.
	Article 5[3] Nothing in the present Convention shall prevent a Contracting State from reserving under its legislation to its own nationals the right to edit newspapers or news periodicals produced within its territory.		*Article 8* Nothing in the present Convention shall prevent a Contracting State from reserving under its legislation to its own nationals the right to edit newspapers or news periodicals produced within its territory, or the right to own

[1] Paragraphs (b) and (c) were inserted by the Conference on the proposal of the Delegation of India

[2] Paragraph (d) originated in a proposal of the Delegation of the United Kingdom.

[3] The insertion of this article originated in a proposal made at the Conference by the Delegation of Sweden.

(1)	(2)	(3)	(4)
			(cont'd) or operate telecommunication facilities, including radio broadcasting stations, within its territory.
Article 4 Nothing in the present Convention shall limit the discretion of any Contracting State to refuse entry into its territory to any particular person.	*Article 6* Nothing in the present Convention shall limit the discretion of any Contracting State to refuse entry into its territory to any particular person, or to restrict the period of his residence thereon.		*Article 9* (a) Nothing in the present Convention shall limit the discretion of any Contracting State to refuse entry into its territory to any particular person, or to restrict the period of his residence therein. (b)[1] The present Convention shall not apply to any national of a Contracting State who, while not otherwise admissible into the territory of another Contracting State, is nevertheless admitted conditionally, in accordance with an agreement between that other Contracting State and the United Nations or a specialized agency thereof, or pursuant to a special arrangement made by that other Contracting State in order to facilitate the entry of such national.

[1] Paragraph (b) was inserted by the Committee on the proposal of the Delegation of the United States of America.

(1)	(2)	(3)	(4)
Article 5 As between the Contracting States which become parties to any general agreement on Human Rights sponsored by the United Nations and containing provisions relating to freedom of information, the present Convention shall be superseded by such agreement to the extent that the two instruments are inconsistent.	*Article 7* As between the Contracting States which become parties to any general agreement on human rights sponsored by the United Nations and containing provisions relating to freedom of information, the present Convention shall be superseded by such agreement to the extent that the two instruments are inconsistent.		*Article 10* As between the Con tracting States whicl become parties to any general agreement or human rights sponsored by the United Nations and containing provi sions relating to the freedom of information in so far as any provi sion of the genera agreement relates to the same subject matter the two provisions shal whenever possible be treated as complemen tary so that both provi sions shall be applic able and neither shal narrow the effect o the other; but in any case of incompatibility the provisions of the general agreement shal prevail.
Article 6 In time of war or other public emergency a Contracting State may take measures derogating from its obligations under the present Convention to the extent strictly limited by the exigencies of the situation. Any Contracting State availing itself of this right of derogation shall inform the Secretary-General of the United Nations fully of	*Article 8* In time of war or other public emergency a Contracting State may take measures derogating from its obligations under the present Convention to the extent strictly limited by the exigencies of the situation. Any Contracting State availing itself of this right of derogation shall promptly inform the Secretary-General of the United Nations of		*Article 11* (a) In time of wa or other public emer gency a Contractin State may take meas ures derogating fron its obligations under th present Convention t the extent strictly li mited by the exigencie of the situation. (b) Any Contractin State availing itself o this right of derogatio shall promptly inforn the Secretary-General o the United Nations o

(1)	(2)	(3)	(4)
(cont'd) the measures which it has thus adopted and of the reasons therefor. It shall also inform him as and when the measures cease to operate.	(cont'd) the measures which it has thus adopted and of the reasons therefor. It shall also inform him as and when the measures cease to operate.		(cont'd) the measures which it has thus adopted and of the reasons therefor. It shall also inform him as and when the measures cease to operate.
Article 7 Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States concerned agree to another mode of settlement.	*Article 9* Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement.		*Article 12* Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement.
			Article 13[1] (a) The present Convention shall be open for signature to all States Members of the United Nations, to every State invited to the United Nations Conference on Freedom of Information held at Geneva in 1948, and to every other State which the General Assembly may declare to be eligible. (b) The present Convention shall be ratified

[1] This article provides for signature and ratification as an alternative means of becoming party to he Convention. The previous texts provided for accession only.

(1)	(2)	(3)	(4)
			(cont'd) by the States signatory hereto in conformity with their respective constitutional processes. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.
Article 8	*Article 10*		*Article 14*
The present Convention shall be open for accession to every State invited to the United Nations Conference on Freedom of Information held at Geneva in March and April, 1948, and to every other State which the General Assembly of the United Nations shall, by resolution, declare to be eligible.	1. The present Convention shall be open for accession to every State invited to the United Nations Conference on Freedom of Information held at Geneva in March and April, 1948, and to every other State which the General Assembly of the United Nations shall, by resolution, declare to be eligible.		(a) The present Convention shall be open for accession to the States referred to in paragraph (a) of Article 13.
Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.	2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.		(b) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
Article 9	*Article 11*		*Article 15*
When any two of the States mentioned in Article 8 have deposited their instruments of accession, the present Convention shall come into force between them on the thirtieth day after the date of the deposit of the second instru-	When any two of the States mentioned in Article 10 have deposited their instruments of accession, the present Convention shall come into force between them on the thirtieth day after the date of the deposit of the second instru-		(a) The present Convention shall come into force on the thirtieth day following the date of deposit of the sixth instrument of ratification or accession. (b) For each State ratifying or acceding to the Convention after

(1)	(2)	(3)	(4)
(cont'd) nent of accession. It hall come into force for ach State which ac-edes after that date on he thirtieth day after he deposit of its in-trument of accession.	(cont'd) ment of accession. It shall come into force for each State which accedes after that date on the thirtieth day after the deposit of its instrument of accession.		(cont'd) the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force thirty days after the deposit by such State of its instrument of ratification or accession.
			Article 16[1] The provisions of the present Convention shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they non-self-governing, trust or colonial territories, which are being administered or governed by such metropolitan State.
Article 10 Any Contracting State may denounce the present Convention by notification of denunci-tion to the Secretary-General of the United Nations. Denunciation hall take effect six months after the date of receipt by the Sec-etary-General of the United Nations of the	*Article 12* Any Contracting State may denounce the present Convention by notification of denunciation to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt by the Secretary-General of the United Nations of the		*Article 17* (a) Any Contracting State may denounce the present Convention by notification of denunciation to the Secretary-General of the United Nations. (b) Denunciation shall take effect six months after the date of receipt by the Secretary-General of the

[1] This article is a substitute for the so-called colonial clause. Cp. Article XVIII of the Convention n the International Transmission of News and the Rights of Correction and Article IX of the Con-ntion on the International Right of Correction.

(1)	(2)	(3)	(4)
(cont'd) notification of denunciation.	(cont'd) notification of denunciation.		(cont'd) United Nations of th notification of denun ciation.
Article 11	*Article 13*		
(a) A State party to the present Convention may at the time of its accession thereto or at any time thereafter by notification addressed to the Secretary-General of the United Nations declare that the present Convention shall extend to any of the territories for the international relations of which it is responsible, and the Convention shall extend to the territories named in the notification as from the thirtieth day after the date of receipt of the Secretary-General of the United Nations of the notification.	(a) A State party to the present Convention may at the same time of its accession thereto or at any time thereafter by notification addressed to the Secretary-General of the United Nations declare that the present Convention shall extend to any of the territories for the international relations of which it is responsible, and the Convention shall extend to the territories named in the notification as from the thirtieth day after the date of receipt by the Secretary-General of the United Nations of the notification. The respective Contracting States undertake to seek immediately the consent of the Governments of such territories to the application of the present Convention to such territories, and to accede forthwith on behalf of and in respect of each such territory, if and when its consent has been obtained.		(Compare Article 1 above)

(1)	(2)	(3)	(4)
(cont'd) (b) A State which has made a declaration under paragraph (a) above extending the present Convention may at any time thereafter by notification to the Secretary-General of the United Nations declare that the Convention shall cease to extend to any territory named in the notification, and the Convention shall then cease to extend to such territory six months after the date of receipt by the Secretary-General of the United Nations of the notification.	(cont'd) (b) A State which has made a declaration under paragraph (a) above extending the present Convention may with the consent of the Government concerned at any time thereafter by notification to the Secretary-General of the United Nations declare that the Convention shall cease to extend to any territory named in the notification, and the Convention shall then cease to extend to such territory six months after the date of receipt by the Secretary-General of the United Nations of the notification.		
Article 12 The Secretary-General of the United Nations shall notify each of the States referred to in Article 8 of the date of the deposit of every instrument of accession and of the date on which this Convention comes into force and of any information received by him in accordance with the provisions of Article 9 and of every notification received by him in accordance with the provisions of Articles 10 or 11.	*Article 14* The Secretary-General of the United Nations shall notify each of the States referred to in Article 10 of the date of the deposit of every instrument of accession and of the date on which this Convention comes into force and of any information received by him in accordance with the provisions of Article 11 and of every notification received by him in accordance with the provisions of Articles 12 or 13.		*Article 18* The Secretary-General of the United Nations shall notify the States referred to in paragraph (a) of Article 13 of the following: (a) Information received in accordance with Article 11; (b) Signatures, ratifications and accessions received in accordance with Articles 13 and 14; (c) The date upon which the present Convention comes into force in accordance with Article 1.

(1)	(2)	(3)	(4)
			(cont'd) (d) Notifications received in accordance with Article 17. *Article 19* (a) The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations. (b) The Secretary-General of the United Nations shall transmit a certified copy to each State referred to in paragraph (a) of Article 13.

Appendix 6

Statement of the Rights, Obligations and Practices to be Included in the Concept of Freedom of Information

adopted by the Sub-Commission on Freedom of Information and of the Press, at its second session, 19 January to 3 February 1948.

1. The Sub-Commission on Freedom of Information and of the Press presents herewith a short, interim report of the rights, obligations and practices which should be included in the concept of "Freedom of information". Its phrasing should not be taken to imply any binding, legal or restricted interpretation of its content. It is intended only as a broad statement of principles and its provisional character should be emphasized, though it is hoped that even so short and general a statement may serve to focus future discussions and to present an introduction to the subject which will prove acceptable:

(a) Freedom of information is a fundamental right and is the touchstone of all the freedoms to which the United Nations are dedicated.

(b) Its establishment is essential to the maintenance, increase and diffusion of science and knowledge, and the strengthening of it will give fresh impetus to popular education and the spread of culture.

(c) Freedom of information implies the right to think and to hold opinions without interference, to seek, receive and impart information and ideas by any means without fetters and regardless of frontiers.

(d) For news personnel above all, but also for everyone so far as practical considerations permit, this freedom includes the right to have the widest possible access to the sources of information and to travel unhampered in pursuit thereof, and also to safeguard all sources of information honourably used.

(e) The right to freedom of information and expression carries with it duties and responsibilities. These are so closely joined that their union justifies:

(1) certain legal restriction, the definition of which, together with the definition of the right itself, should be incorporated in an international covenant or other multilateral or bilateral agreements within the framework of the United Nations; and

(2) certain moral obligations of equal importance.

(f) The restrictions, penalties or liabilities referred to under sub-head (1) of the preceding paragraph should, however, be imposed only for causes clearly defined by law. They should be confined to matters which must remain secret in the vital interests of the state; expressions which incite

persons to alter by violence a system of government, except in cases of resistance to oppression; expressions which directly incite persons to commit criminal acts; expressions which are obscene; expressions injurious to the fair conduct of legal proceedings; expressions which infringe rights of literary and artistic property; and expressions about other persons which defame their reputation or are otherwise injurious to them without benefiting the public. Previous censorship of written and printed matter, the radio and newsreels shall not exist. Within the limits thus broadly described the right to freedom of communication should be considered legally absolute. Any abridgment of it, as, for instance, by previous censorship, should be considered inimical to freedom.

(g) The right to freedom of expression also confers upon all who enjoy it the moral obligation to tell the truth without prejudice and to spread knowledge without malicious intent, to facilitate the solution of the economic, social and humanitarian problems of the world as a whole through the free interchange of information bearing on such problems, to help promote respect for human rights and fundamental freedoms without any arbitrary discrimination, to help maintain international peace and security and to counteract the persistent spreading of false or distorted reports which provoke hatred or prejudice against states, persons or groups of different race, language, religion or philosophical conviction, confuse the peoples of the world, aggravate relations between nations or otherwise threaten and destroy the fruits of the common victorious struggle of nations against the Nazi, Fascist and Japanese aggressions during the last world war.

(h) The legal form of censorship of the mass media of information is an element which must be taken into account as much as the spirit animating the owners. It is fundamental to the safeguarding of freedom of information that the use of the media should be governed by a willingness to express fairly differing points of view, especially on matters of importance, so that the public may have adequate facts on which to make decisions. Use of the media as an instrument of power, and not as an agency of information, destroys their capacity to inform in this comprehensive and representative fashion.

(i) To prevent the media of information from becoming instruments of exploitation of public opinion, whether in the service of governments, financial interests or other private bodies, the following precautions or guarantees should be studied, either in whole or in part:

(1) nomination of "boards of trustees";

(2) measures aimed at fixing the responsibility of directors of organs of information and of information personnel in the event of serious professional misdemeanour;

(3) compulsory or voluntary conversion of daily organs of information into co-operatives, trust foundations, joint stock companies or any other form of ownership facilitating control in the public interest;

(4) measures preventing any preferential treatment and discrimination on the part of the State relating to: newsprint and technical sup-

plies or the activities of news personnel, transmission or dissemination of publications or news;

(5) measures preventing any special link between media of information and financial, commercial or industrial enterprises leading to an undesirable influence on the media of information or to their corruption;

(6) organization of disciplinary councils in the profession of journalism and the promulgation of professional codes of honour;

(7) the training of information personnel in professional competence and in knowledge and understanding of public questions involved in their writing.

(j) Experience proves that dangers arise when the media of information are in the hands of monopolies or quasi-monopolies, either public or private. In the former case, the state must deny itself effective control over all information media; otherwise, the function of criticism may be suppressed. In the latter case, information may be easily restricted or distorted to the detriment of the public interest.

(k) The remedies for both situations deserve careful study. When the media are privately owned, attention should be directed to such measures as:

(1) the establishment of boards where complaints can be heard with assurance of adequate publication of their findings;

(2) compulsory disclosure of ownership and other financial matters;

(3) regulation of the source of capital;

(4) removal of advertising pressures;

(5) regulation or prevention of the formation of national and international cartels;

(6) maintenance of diversity of sources of information and prevention of the standardization of news, especially on the part of governmental information services.

In all cases there should be provision for continuing and impartial studies of the actual performance of all mass media.

(l) Physical facilities and technical equipment for the dissemination of information both nationally and internationally should be distributed on a reasonable and equitable basis. Without this, information will lack the comprehensive and representative qualities required. Reasonable and equitable access to means of transmission should also be established everywhere.

(m) It is recognized that in time of war or proclaimed public emergency, a state may take measures derogating from the principles outlined in this paper but only to an extent justified by the exigencies of the situation.

2. In its consideration of the rights, obligations and practices to be included in the concept of freedom of information and, especially in connection with sub-paragraphs (d) and (g) in the preceding paragraph, the Sub-Commission voted favourably on the following resolution submitted by Mr. J. M. Lomakin (Union of Soviet Socialist Republics):

Rights and Duties of Organs of Information and the Press

1. The Sub-Commission considered it essential, in the interest of the spread of honest information, to provide telegraph agencies, newspapers and broadcasting companies with a broad access to the sources of information and to the means of communication on the territories of their own countries, as well as in other countries, within bounds that are compatible with the interests of national security-

2. The Sub-Commission considered essential the working out of such measures, which would secure the increasing availability of the communication of truly honest and objective information.

Heimer, E. H., Om vittnesbevis angående sådant som blivit sagt mellan fyra ögon. 1929. *1:75.*

——, Om bevisbördan. En processrättslig undersökning. 1930. *1:50.*

Hellner, J., Försäkringsgivarens regressrätt. 1953. *20 kr.*

Holmbäck, Å., Studier över de svenska allmänningarnas historia. 1. 1920. *2 kr.*

——, Studier i äldre sjörätt. Tillika ett bidrag till Grotiusjubileet. 1926. *1:25.*

——, Hand skall hand få. Ett bidrag till godtrosförvärvens historia. 1928. *50 öre.*

——, Den fasta mellanfolkliga domstolen åren 1922—1929. Några fakta. 1929. *1 kr.*

Hult, Ph., Om juridiska studier. 1949. *1:50.*

Hägerström, A., Das magistratische Ius in seinem Zusammenhang mit dem römischen Sakralrechte. 1929. *2:75.*

Landtmanson, I. S., Om concursbo, dess begrepp, uppkomst och omfattning. 1866. *(Utsåld.)*

——, Om commodum possessionis och besittningsskydd. 1863. *65 öre.*

——, Studier i arfsrättens historia. 1869. *(Utsåld.)*

——, Svensk rättshistoria i utlandet. 1883. *1 kr.*

Lindahl, E., Om förhållandet mellan penningmängd och prisnivå. 1929. *50 öre.*

Lundstedt, V., Den historiska rättspositivismen. 1929. *2:25.*

Malmström, Å., Till frågan om villkor vid fastighetsköp. 1. 1932. *5 kr.* — 2. 1933. *4 kr.*

——, Det s. k. kvalifikationsproblemet inom internationell privaträtt 1938. *1:75.*

——, Successionsrättsliga studier. 1938. *9 kr.*

——, Om säkerhetsöverlåtelse av fast egendom. 1950. *1 kr.*

Minnesskrift utgiven av Juridiska Fakulteten i Uppsala 1929 till hågkomst av dess första doktorspromotion 1629. 1929. *23:50.*

Montelius, A., Om vanhederlighets rättsverkan. 1920. *6 kr.*

Munktell, H., Bergsmans- och bruksförlag intill 1748 års förlagsförordning. 1934. *6 kr.*

——, Om jävsförhållanden inom statsförvaltningen. 1936. *2:50.*

——, Två straffrättshistoriska studier. 1940. *2:25.*

Nilsson, J., Bidrag till ärfdabalkens historia 1686—1736:

II. Källskrifter 1. Förslagen till ärfdabalk. 1892. *4:50.*

II. D:o 2. Protokoll och betänkanden. 1895. *4:50.*

Nordling, E. V., Om lösöreköpsförordningen d. 20 Nov. 1845. 2:a uppl. 1866. *(Utsåld.)*

——, Om remedia juris enligt svensk lag. 1863. *1 kr.*

——, Om res fungibiles och därmed sammanhängande ämnen. 2:a uppl. 1867. *(Utsåld.)*

——, Om präscription enligt svensk allmän förmögenhetsrätt. 1877: Festskrift. *(Utsåld.)*

Olivecrona, K., Studier över begreppet juridisk person i romersk och modern rätt. 1928. *6:50.*

——, En teori om bevisbördan. 1929. *1 kr.*

Olivecrona, S. R. D. K., Bidrag till den svenska concurs-lagstiftningens historia 1862. *35 öre.*

——, Blick på den juridiska undervisningens närvarande tillstånd i England. 1862. *30 öre*

Rabenius, O. M. T., Om näringsfrihetens utveckling. 1867. *(Utsåld.)*

——, Om beskattningens grunder. Inträdesföreläsning. 1862. *25 öre.*

——, Om eganderätt till grufvor. 1863. *1 kr.* *(Utsåld.)*

Reuterskiöld, C. A., Om stater och internationella rättssubjekt. 1896. *(Utsåld.)*

——, Ueber Rechtsauslegung, eine rechtsdogmatische Principienuntersuchung. 1899. *2 kr.*

——, Bidrag till läran om aftal särskildt mellan frånvarande. En komparativ rättsstudie. 1. 1900. *3:50.*

Reuterskiöld, C. A., Den svenska kyrkorätten och äktenskapet. 1929. *75 öre.*

——, Om statsregleringen som svenskt rättsinstitut. 1932. *1 kr.*

Rinander, V. A., Kanonisk rätt och nutida offentlig rätt. 1927. *5:50.*

Rydin, H. L., Några anmärkningar om konungens rätt att göra nåd samt dess förhållande till dispensations-restitutionsrätten (ur föreläsningar i svensk statsrätt). 1861. *(Utsåld.)*

Sjögren, W., Bidrag till en undersökning af kontraktsbrotten enligt Sveriges medeltidslagar. 1896. *(Utsåld.)*

Sterzel, F., Bidrag till läran om bedrägeribrottet. 1919. *7 kr.*

Sundberg, H. G. F., Rätten till väg och gata. 1929. *2:25.*

——, Villkor för anslag. 1932. *2 kr.*

——, Lag och traktat. 1934. *(Utsåld.)*

Thordén, K. M., Öfversigt af norska städernas författning efter »Lov om Formandskaber i Kjöbstæderne». 1870. *1 kr.*

Trygger, E., Lagsökning för gäld. 1893. *1 kr. (Utsåld.)*

Undén, Ö., Idén om krigets kriminalisering. 1929. *75 öre.*

——, Rättegång mot utländsk stat. 1929. *1 kr.*

——, Om begreppet anfallskrig. 1930. *75 öre.*

——, Staters internationella ansvarighet för domstolsavgöranden. 1930. *50 öre.*

——, L'Affaire Martini. Une sentence arbitrale internationale. 1930. *2 kr.*

——, Om vittnen vid fastighetsköp. 1931. *1 kr.*

——, L'Article 181 du Traité de Neuilly. (Question préalable.) Une sentence arbitrale internationale. 1932. *75 öre.*

——, Anteckningar om sanktionsproblemet. I. 1932. *50 öre.*

——, Från arbetsdomstolens praxis. 1932. *1 kr.*

——, L'Article 181 du Traité de Neuilly. (Question de fond.) Une sentence arbitrale internationale. 1933. *2 kr.*

Wahlberg, C. J., Åtgärder för lagförbättring 1633—1665. Urkunder. 1—2. 1877—78. *4:50.*

Westman, K. G., Kungsådran i den svenska rätten under medeltiden. 1927. *2:25.*

——, Juris doktorer vid Uppsala Universitet 1629—1929. Förteckning på Juridiska Fakultetens uppdrag upprättad. 1929. *1:25.*

——, Kungsådran inför konung och ständer under nyare tiden intill 1734 års lag. 1929. *1:50.*

Wetter, F., Straffansvar vid rus. 1929. *2 kr.*

Winroth, A. O., Om tjänstehjonsförhållandet enligt svensk rätt. 1. 1879. *(Utsåld.)*

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