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DRAFT CONVENTION ON FREEDOM OF INFORMATION

Report of the Third Committee

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INTRODUCTION

1. At its 881st plenary meeting, on 1 October 1960, the General Assembly allocated to the Third Committee item 35 of the agenda of its fifteenth session (Draft Convention on Freedom of Information).
2. The item had been placed on the agenda of the General Assembly pursuant to resolution 1313 C (XIII) of 12 December 1958, whereby the Assembly decided to proceed, at its fourteenth session, to the discussion of the text of the draft Convention. At the fourteenth session, the Third Committee adopted the preamble and article 1 of the draft Convention.^{1/} By resolution 1459 (XIV) of 10 December 1959, the General Assembly decided "to give priority to this item at its fifteenth session and to request the Third Committee at that session to devote as many meetings as possible to the consideration of the remaining articles of the draft Convention".
3. The Committee had before it the text of the draft Convention as formulated by the fifteen-Power Committee on the Draft Convention on Freedom of Information established by the General Assembly under resolution 426 (V);^{2/} two reports by the Secretary-General on views, suggestions and comments forwarded by Governments

^{1/} Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 35, document A/4341.

^{2/} Ibid., Seventh Session, Annexes, agenda item 29, document A/AC.42/7.

pursuant to General Assembly resolutions 1189 A (XII) and 1313 C (XIII);^{3/} and a note by the Secretary-General on the draft Convention.^{4/}

4. The Committee discussed the draft Convention at its 1028th to 1045th meetings, from 21 November to 5 December 1960, and adopted the text of article 2.

ARTICLE 2

5. Article 2 of the draft Convention as formulated by the above-mentioned Committee read as follows:

"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 in confidence in a professional or official capacity; or

"(i) The prevention of fraud."

General discussion

6. Article 2, dealing with permissible restrictions on the exercise of the freedom of information, was widely regarded as the heart of the Convention. The

^{3/} A/3868 and Add.1-8, and A/4173 and Corr.1 and Add.1-3.

^{4/} A/4401.

focal question in the discussion was, in fact, the nature of freedom of information itself. It was pointed out that this freedom was everywhere subject to some restrictions. There was much divergence of opinion, however, as to the scope of such restrictions and the manner in which they should be applied. Some members stressed that if far-reaching restrictions were made permissible under this article the Convention would be transformed into an instrument for the restriction of freedom of information, a freedom which had been won at the cost of great sacrifice; and that they would consequently not be able to adhere to such a Convention. Other members held that countries which did not possess well developed media of information must be enabled to protect themselves against biased or sensational reporting, and that incitement to war, and to national, racial or religious hatred was too dangerous to be condoned in the name of freedom of information.

7. The Committee also discussed the relative merits of prior censorship and subsequent responsibility of authors; the question of which authorities should decide on alleged violations of restrictions in the various countries; and the relationship of this Convention to other international instruments dealing with freedom of information.

8. The views of members of the Committee on these and other questions, as well as on specific points of drafting, may be found in the summary records of the Committee's 1028th to 1045th meetings (A/C.3/SR.1028 to 1045).

Amendments submitted

9. Amendments were submitted by Cuba (A/C.3/L.879); Pakistan (A/C.3/L.883); Brazil, Ceylon, Federation of Malaya, Ghana, India, Liberia, Nigeria, Philippines, Saudi Arabia and Yugoslavia (A/C.3/L.885 and Rev.1 and 2); Argentina, Bolivia, Chile, Costa Rica, Guatemala, Peru, Uruguay and Venezuela (A/C.3/L.886 and Rev.1); and Saudi Arabia (A/C.3/L.887).

10. Sub-amendments to the amendment by Brazil, Ceylon, Federation of Malaya, Ghana, India, Liberia, Nigeria, Philippines, Saudi Arabia and Yugoslavia (A/C.3/L.885 and Rev.1 and 2) were submitted by Pakistan (A/C.3/L.888 and Rev.1); Cambodia, Greece, Guatemala, Italy and Turkey (A/C.3/L.890 and Add.1);^{5/} and Saudi Arabia (A/C.3/L.891).

^{5/} Lebanon became a co-sponsor of the sub-amendment (A/C.3/L.890/Add.2), but subsequently withdrew its sponsorship (A/C.3/SR.1043).

11. Working papers were submitted by the Philippines (A/C.3/L.878); by Brazil, India, Liberia, Nigeria and Yugoslavia (A/C.3/L.880); and by Saudi Arabia (A/C.3/L.881 and A/C.3/L.884).

Texts of amendments

12. The amendment submitted by Cuba (A/C.3/L.879) called for insertion in article 2 of a new sub-paragraph (c) reading as follows:

"(c) Expressions and information which are false and which create tensions in international relations, or in the relations between racial, national or religious groups."

13. The amendment submitted by Pakistan (A/C.3/L.883) called for insertion of a new sub-paragraph (h) to read:

"(h) Expressions about founders of religions which injure the sentiments of the followers of those religious."

14. Philippines introduced a working paper (A/C.3/L.878) which called for the replacement of article 2, as prepared by the fifteen-Power Committee, by a briefer version reading:

"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 defined by law, applied in accordance with law and necessary for the protection of national security; for the prevention of disorder or crime; for the protection of public safety, health or morals; for the protection of the rights and reputations of others; or for ensuring the fair administration of justice."

15. A working paper by Saudi Arabia (A/C.3/L.884) suggested inserting after the words "for the protection of national security", the words "for the prevention of deliberate and systematic propaganda for war or for national, racial and religious hatred".

16. A working paper submitted by Brazil, India, Liberia, Nigeria and Yugoslavia (A/C.3/L.880) proposed replacing sub-paragraph (a) of article 2, reading "the protection of national security", by the words "national safety"; and inserting after sub-paragraph (b) two new sub-paragraphs reading:

"(c) Expressions disseminating false and distorted news harmful to friendly relations among nations;

"(d) Expressions inciting to national, racial or religious hatred;"

17. The working papers of the Philippines (A/C.3/L.878), Saudi Arabia (A/C.3/L.884) and Brazil, India, Liberia, Nigeria and Yugoslavia (A/C.3/L.880) were superseded by a text (A/C.3/L.885) presented as a formal amendment by Brazil, Ceylon, Federation of Malaya, Ghana, India, Liberia, Nigeria, Philippines, Saudi Arabia and Yugoslavia. The amendment called for replacing the text of article 2 by the following:

"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 law and necessary for the protection of national security and safety; for the prevention of systematic circulation /of false reports harmful to friendly relations among nations and/ of expressions inciting to war or to national, racial or religious hatred; for the prevention of incitement to violence and crime; for the protection of public health and morals, and of the rights, honour and reputation of persons, natural or legal; or for ensuring the fair administration of justice."

The co-sponsors were, however, unable to agree on the clause within brackets and therefore asked that it be put to the vote separately.

18. The sponsors of the ten-Power amendment subsequently revised their text (A/C.3/885/Rev.1) so as to eliminate the expressions "for the protection of", "for the prevention of", "or for ensuring"; they also replaced the words "systematic circulation" by "systematic dissemination" and the words "... reputation of persons, natural or legal" by the words "... reputation of others".

19. Subsequently, the opening clause of the second sentence was changed to read "It may, however, be subject only to such necessary restrictions as are clearly defined by law and applied in accordance with the law in respect of:". The amendment as revised by the sponsors thus read as follows (A/C.3/L.885/Rev.2):

"The exercise of the freedoms referred to in article 1 carries with it duties and responsibilities. It may, however, be subject only to such necessary restrictions as are clearly defined by law and applied in accordance with the law in respect of: national security and safety; systematic dissemination /of false reports harmful to friendly relations among nations and/ of expressions inciting to war or to national, racial or religious hatred; incitement to violence and crime; public health and morals; the rights, honour and reputation of others; and the fair administration of justice."

20. A sub-amendment by Cambodia, Greece, Guatemala, Italy and Turkey (A/C.3/L.890 and Add.1) called for replacing the word "safety" which followed "national security and" by the phrase "public order (ordre public)".
21. A sub-amendment by Pakistan (A/C.3/L.888 and Rev.1)^{6/} proposed to add "attacks on founders of religions;" after the words "of expressions inciting to war or to national, racial or religious hatred;".

Addition of a new paragraph

22. A working paper presented by Saudi Arabia (A/C.3/L.881) suggested the addition of a second paragraph to article 2, reading:
- "2. The limitations listed (mentioned) in paragraph 1 shall not be imposed without due consultation with the national associations of the press or other (national) media of information."
23. Argentina, Bolivia, Chile, Costa Rica, Guatemala, Peru, Uruguay and Venezuela (A/C.3/L.886) submitted a formal amendment suggesting addition of a new paragraph reading:
- "The limitations specified in the preceding paragraph shall not be deemed to justify the application of prior censorship by any State."
- Subsequently the sponsors revised their amendment to read (A/C.3/L.886/Rev.1):
- "2. The limitations specified in the preceding paragraph shall not be deemed to justify the imposition by any State of prior censorship on news, comments and political opinions and may not be used as grounds for restricting the right to criticize the Government."
24. At the 1038th meeting, Saudi Arabia withdrew its working paper (A/C.3/L.881) and submitted a formal amendment (A/C.3/L.887) calling for the addition of a new paragraph reading:
- "2. Nothing in paragraph 1 shall be deemed to justify the application of any arbitrary measures which would violate freedom of information."

^{6/} The change made in document A/C.3/L.888/Rev.1 was consequential on changes made in the main amendment (A/C.3/L.885/Rev.1).

Saudi Arabia subsequently submitted a sub-amendment (A/C.3/L.891) to the revised eight-Power amendment (A/C.3/L.886/Rev.1), reading as follows:

"Delete the phrase 'prior censorship on news, comments and political opinions and may not be used as grounds for restricting the right to criticize the Government' and substitute the following: 'arbitrary measures which would violate freedom of information'."

Voting on article 2

25. At its 1044th meeting, the Committee voted on article 2 as follows:
26. The ten-Power amendment (A/C.3/L.885/Rev.2) and the two sub-amendments thereto (A/C.3/L.890 and Add.1, and A/C.3/L.888/Rev.1) were put to the vote first.
27. The sub-amendment of Cambodia, Greece, Guatemala, Italy and Turkey (A/C.3/L.890 and Add.1), relating to the words "public order (ordre public)", was adopted by 34 votes to 12, with 27 abstentions.
28. At the request of the representative of Pakistan, a roll-call vote was taken on the Pakistani sub-amendment (A/C.3/L.888/Rev.1) concerning founders of religions. It was adopted by 22 votes to 9, with 47 abstentions. The voting was as follows:

In favour: Argentina, Cambodia, China, Costa Rica, Cyprus, Dominican Republic, Greece, Iran, Iraq, Israel, Jordan, Lebanon, Morocco, Nepal, Nigeria, Pakistan, Saudi Arabia, Sudan, Togo, Tunisia, United Arab Republic, Yemen.

Against: Denmark, Finland, Ghana, Iceland, Japan, Norway, Philippines, Sweden, Yugoslavia.

Abstaining: Afghanistan, Albania, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Central African Republic, Ceylon, Chile, Colombia, Cuba, Czechoslovakia, Ecuador, El Salvador, Ethiopia, Federation of Malaya, France, Guatemala, Haiti, Hungary, India, Indonesia, Ireland, Italy, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Panama, Peru, Poland, Portugal, Romania, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

29. A separate vote was requested by the representative of Chile on the word "national", before the word "racial" in the second sentence of the ten-Power amendment. The word "national" was adopted by 41 votes to 6, with 27 abstentions.

30. As requested by the representative of the Philippines, a separate vote was taken on the phrase "of false reports harmful to friendly relations among nations and". The phrase was adopted by 44 votes to 22, with 14 abstentions.
31. The representative of Cuba at that point withdrew her amendment (A/C.3/L.879) to the original text of article 2 dealing with that question.
32. Upon the request of the representative of Chile, a separate vote was taken on the words "and the fair administration of justice". The words were adopted by 46 votes to 8, with 23 abstentions.
33. Upon the request of the representative of Guatemala, a separate vote was taken on the entire clause beginning with the words "systematic dissemination" to the end of the sentence as amended. The clause as amended was adopted by 47 votes to 10, with 18 abstentions.
34. At the request of the representative of Afghanistan, a roll-call vote was taken on the ten-Power amendment (A/C.3/L.885/Rev.2) as amended. The text was adopted by 46 votes to 8, with 23 abstentions, the voting being as follows:

In favour: Afghanistan, Albania, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Central African Republic, Ceylon, China, Colombia, Cuba, Cyprus, Czechoslovakia, Dominican Republic, Ethiopia, Federation of Malaya, Ghana, Haiti, Hungary, India, Indonesia, Iran, Iraq, Israel, Jordan, Lebanon, Liberia, Mexico, Morocco, Nepal, Nigeria, Pakistan, Peru, Poland, Portugal, Romania, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Yugoslavia.

Against: Belgium, Denmark, Finland, Iceland, Luxembourg, Netherlands, Norway, Sweden.

Abstaining: Argentina, Australia, Austria, Bolivia, Canada, Chile, Costa Rica, Ecuador, El Salvador, France, Greece, Guatemala, Ireland, Italy, Japan, New Zealand, Panama, Philippines, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Voting on additional paragraph

35. At the request of the representative of India, a separate vote was taken on the words "which would violate freedom of information" appearing at the end of the Saudi Arabian sub-amendment (A/C.3/L.891) to the amendment of Argentina,

Bolivia, Chile, Costa Rica, Guatemala, Peru, Uruguay and Venezuela (A/C.3/L.886/Rev.1); the words were rejected by 33 votes to 20, with 17 abstentions.

36. At the request of Argentina, a roll-call vote was taken on the remaining words of the sub-amendment. They were rejected by 35 votes to 29, with 13 abstentions, the voting being as follows:

In favour: Afghanistan, Albania, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Ethiopia, Federation of Malaya, Ghana, Hungary, India, Indonesia, Iran, Iraq, Jordan, Liberia, Morocco, Nigeria, Poland, Romania, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen, Yugoslavia.

Against: Argentina, Australia, Austria, Belgium, Bolivia, Canada, Chile, Colombia, Costa Rica, Cyprus, Denmark, Ecuador, El Salvador, Finland, France, Greece, Guatemala, Iceland, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, Sweden, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Abstaining: Burma, Cambodia, Central African Republic, China, Cuba, Dominican Republic, Haiti, Lebanon, Mexico, Nepal, Pakistan, Portugal, Thailand.

37. The representative of Argentina pointed out on behalf of the sponsors of the eight-Power amendment (A/C.3/L.886/Rev.1) that the word "limitaciones" in the Spanish text should be replaced by the word "restricciones", to bring it into line with the wording in the first part of the article, as adopted.

38. The representative of India having asked for a separate vote on the words "on news, comments", the words were adopted by 43 votes to 18, with 14 abstentions.

39. At the request of the representative of the Philippines, a separate vote was taken on the words "and may not be used as grounds for restricting the right to criticize the Government". The words were adopted by 36 votes to 25, with 14 abstentions.

40. At the request of the representative of Morocco, the remaining words, "and political opinions", were put to the vote. They were adopted by 38 votes to 17, with 19 abstentions.

41. At the request of the representative of Argentina, a roll-call vote was taken on the eight-Power amendment (A/C.3/L.886/Rev.1), as amended. It was adopted by 39 votes to 22, with 15 abstentions, the voting being as follows:

In favour: Afghanistan, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Greece, Guatemala, Iceland, India, Italy, Japan, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, Sweden, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela.

Against: Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Czechoslovakia, Ethiopia, Ghana, Hungary, Iran, Iraq, Jordan, Morocco, Nigeria, Poland, Romania, Saudi Arabia, Sudan, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yemen.

Abstaining: Burma, Central African Republic, Cuba, Federation of Malaya, Haiti, Indonesia, Ireland, Israel, Liberia, Mexico, Nepal, Pakistan, Portugal, Thailand, Yugoslavia.

Voting on article 2 as a whole

42. At the request of the representative of Saudi Arabia, a roll-call vote was taken on article 2, as amended, as a whole. The article was adopted by 50 votes to 5, with 19 abstentions, the vote being as follows:

In favour: Afghanistan, Albania, Argentina, Bolivia, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Central African Republic, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dominican Republic, El Salvador, Ethiopia, Federation of Malaya, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran, Lebanon, Liberia, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Saudi Arabia, Sudan, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, Venezuela, Yemen, Yugoslavia.

Against: Denmark, Finland, Iceland, Norway, Sweden.

Abstaining: Australia, Austria, Belgium, Burma, Canada, France, Ghana, Iraq, Ireland, Israel, Italy, Japan, Luxembourg, Nepal, Netherlands, New Zealand, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America.

Text as adopted

43. The text of article 2, as adopted by the Committee, is contained in the annex to the present report.

DRAFT RESOLUTION SUBMITTED BY THE REPRESENTATIVE
OF THE PHILIPPINES

44. The Third Committee received a draft resolution submitted by the Philippines (A/C.3/L.889) embodying a proposal for a draft protocol to the Convention on Freedom of Information. Although various delegations made observations on the Philippine proposal, lack of time prevented the Committee from examining this draft resolution at the current session. The Philippine delegation reserved its right to raise the matter again at an appropriate time.