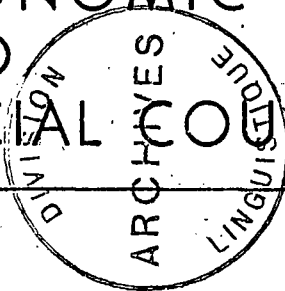


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Item 20

REPORT OF THE COMMITTEE ON THE DRAFT CONVENTION  
ON FREEDOM OF INFORMATION

Suggestions and Observations of Governments on the  
draft Convention

VIII. United States of America

The following suggestions and observations dated 15 June 1951 were received from the Government of the United States of America:

"The position of this Government concerning the Draft Convention on Freedom of Information was fully and precisely expressed by the United States Representative, Mr. Carroll Binder, in the Committee which prepared this text. In the view of the Government of the United States the preamble and nineteen articles, together with Resolution A, adopted by the Committee as the basis for a Convention on Freedom of Information are not consistent with long established and deeply cherished principles of freedom of speech and freedom of the press as understood in the United States. Indeed, certain provisions of the Committee text, and particularly the suggestions contained in Resolution A for inclusion in the text, would expressly violate these principles.

"Article 2, for example, would permit objectionable and unnecessary limitations on freedom of expression, together with other restrictions which,

while perhaps not objectionable in principle, are so formulated as to lead to the probability of their abuse by governments so inclined. Above all, the method of so-called 'specific enumeration' employed in this Article is considered by this Government to be completely impractical and an open invitation to the addition of still more objectionable limitations. That this is not merely a theoretical possibility is demonstrated by Resolution A of the Committee. This resolution, calling for a study of the feasibility of adding to the present set of limitations certain still more objectionable restrictions indicates the open-ended nature of the formulation adopted by the Committee.

"This method, because it aims at an exhaustive listing of permissible limitations on freedom of expression, would compel every government participating in any further consideration of the text to press for the inclusion of any and all restrictions which are presently in force as a matter of its domestic legislation or which it may deem to be necessary for the future. It is evident that if such a method were to be utilized by the 60 Member Governments of the United Nations in completing this text it would lead to the drafting of an agreement embodying the lowest common denominator of freedom of information rather than an instrument capable of safeguarding and promoting the maximum of freedom. That is why this Government has consistently opposed this method and has favored instead the utilization of the formulation employed by the Commission on Human Rights at its Sixth Session in Article 14 of the Draft Covenant on Human Rights.

"Other Articles of this text are also objectionable. Article 4, which would permit the establishment of a 'right of reply or a similar corrective remedy', sets forth no legal safeguards and does not indicate whether the right would operate domestically or internationally. Article 5, which incorporates a sort of model code of ethics for journalists (unrelated to the code which the Sub-Commission on Freedom of Information and of the Press has undertaken to prepare) is considered by this Government to be out of place in a Convention of this nature. It suggests the possibility of undesirable governmental pressure on organizations of journalists.

"The United States Government considers that Articles 6 and 7, which deal with economic problems affecting the media of information, are drafted in a sweeping and arbitrary manner. While many of these problems are indeed worthy of attention, the language presently employed interposes no legal test of reasonableness or of necessity. The only test prescribed is that they are deemed necessary by the Contracting States which impose them; no other Contracting State would have a right even to contest their decision.

"Furthermore, while the Committee kept open the possibility of including an article dealing with federal-state problems, it rejected another article proposed by the United States Representative which would have made clear the non-self-executing nature of the proposed Convention. For the reasons indicated by the United States Representative and summarized in the records of the Committee, this Government could not consider becoming party to any Convention of this nature without such a provision.

"The Government of the United States would also draw attention to the undesirability of attempting to complete a detailed convention covering one of the major rights to be included in the proposed Covenant on Human Rights in advance of the completion of the Covenant. The problem is illustrated by Article 10 of the Committee text, which provides that 'in any case of incompatibility' between the provisions of 'the general agreement' (i.e. the Covenant) and this Convention 'the general agreement shall prevail'. It seems to this Government that to undertake obligations in a detailed agreement which, by their express terms, may be nullified or altered by a second, more general agreement whose provisions are not yet fixed will almost certainly lead to conflicts of interpretation.

"In the opinion of the United States Government, the text of the proposed convention would not aid in correcting certain existing abuses of these freedoms and it could easily be utilized to sanction and legitimize these and other abuses. This Government cannot agree with the assumption which seems to underlie much of the present text, namely that the pressing task of the moment is to define ways and means by which governments may curb

the reporting of news which they consider undesirable. Any proposal which might in any way further restrict the availability of news and information to the peoples of the world would, in the view of the United States Government, be singularly inappropriate at this time when governmental restrictions on the flow of news threaten increasingly to deprive the public of the information which it needs to form conclusions on the many vital problems affecting world peace.

"Much as this Government would welcome a convention which could serve as a means of advancing and safeguarding freedom of speech and freedom of the press throughout the world, it cannot give its support to the text under discussion, and does not deem it suitable for consideration by a special conference."

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