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

Suggestions and Observations of Governments on the Draft Convention

XIX. Burma

1. The draft convention as a whole may be described as an earnest attempt by the United Nations to fulfil the need for the freedom of information arising out of the last world war, and as such it deserves the utmost attention especially of those participating in the movement. The aims and objects of the Convention are fully set out in the Preamble which states inter alia that "it is to achieve these aims the media of information should be free from pressure of dictation" and "that these media by virtue of their power of influencing public opinion bear a great responsibility to the peoples of the world."

2. The core of the Convention centres on Articles 1 and 5 wherein it is provided that:

Article 1.

Subject to the provisions of this Convention:

- (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;

- (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.

Article 5.

Each Contracting State shall encourage the establishment and functioning within its territory of one or more non-official organisations of persons employed in the dissemination of information and opinions to the public; so that such persons may thus be encouraged to observe high standard 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) 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) Help to maintain international peace and security;
- (d) Counteract the dissemination of false or distorted reports which offend the national dignity of peoples or promote hatred or prejudice against states or against persons or groups of different race, language, religion or philosophical conviction; or
- (e) Combat any form of propaganda for war.

The above two articles seek to give to those concerned with the collection and dissemination of information such wide privileges which no responsible country will ordinarily feel possible to extend without prejudice to its interests. That this has been foreseen by the conveners is shown by the fact that safeguards have been provided in other articles of the draft Convention. Such safeguards are contained in Articles 2, 3, 4, 6, 7, 9 and 11.

3. A close examination of the clauses brings out some possible defects in the form of privileges and limitations which cannot be reconciled with each other. For instance, Article 1 forbids discrimination "on political grounds" while Article 2 allows limitation of the privilege when it concerns "the protection of national security". It will be hard to decide when "the protection of national security" ends and when the "political grounds" begins. It will solve no problem, but it will only help to create controversy and lead to further discrimination and unpleasant developments.

4. Article 5 proposes "to encourage the establishment and functioning of one or more non-official organisations of persons employed in the dissemination of information and opinions to the public in the Contracting States so that such persons may thus be encouraged to observe high standard 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 intents." "High standard of professional conduct" is a hard thing to be defined when it concerns the journalistic and other cognate professions and it can never be guaranteed that a man employed in the work will observe it for all purposes. If such be the case, leakage of atomic and budget secrets would never have taken place. The Article further lays down "the moral obligation to report facts without prejudice and in their proper context and to make comments without malicious intent." The moral obligation to report facts and to make comments is to be admitted but it is a very precarious question that these will always be made without prejudice and without malicious intent. What appears to a person to be right may after all prove to be wrong, and it is always a matter of opinion when the question of intention is concerned. And the

fact should not be overlooked that an injury is an injury whether it is done with or without intention. This again vitiates the provision of "protection of national security" in Article 2.

5. Article 5 mentions as one of its purposes "to help to maintain international peace and security". We have nothing against it as it is, but we cannot help feeling that the international peace cannot be separated from the national peace, for history teaches us that troubles all over the world in all ages started from the breach of national peace. The first world war started from a lack of national peace in central European countries and the second world war broke out from similar conditions in Germany and Italy. National peace should not be ignored especially in this context, as the dissemination of information and opinions play a great part in building or destroying the peace, national or international. We would therefore recommend that national peace should be accorded its due place in the proposed Convention.

6. But what matters most in the over-all picture is the right interpretation of the provisions. For instance, Article 11 provides that "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". But what exactly constitutes a "public emergency" and what exactly is the "extent" strictly limited by the exigencies of the situation? Various persons will interpret them in various ways and as such they can provoke controversies and engender complications. The interpretation may be fixed later by competent authorities and the disputes may be set at rest, but by that time the damage might have been done beyond repair, defeating thereby the main purpose of the Convention. It is therefore of utmost importance that the Convention should be as explicit as possible to minimize the necessity for later interpretation.