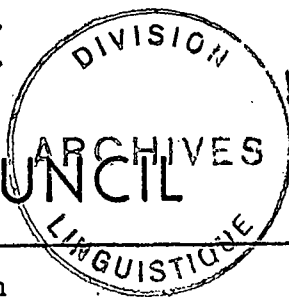


UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/2031/Add.9
13 August 1951

ORIGINAL: ENGLISH

Thirteenth Session
Item 20

Dual Distribution

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

Suggestions and Observations of Governments on the draft Convention

XVIII. The Netherlands

General Discussion.

The freedom of information is one of the principal fundamental human rights in those countries which as regards ideas of spiritual freedom and democracy virtually hold the same views as the Netherlands.

The fact that the freedom of the press and the freedom of assembly and association have but cursorily (and, as is generally believed, incompletely) been laid down in the Netherlands Constitution and the fact that when the Constitution was framed it was omitted to make additional provisions as regards the freedom of information by means of modern technical devices (film, radio, T.V.) indicate that this is a subject which is very difficult to formulate in a number of legal regulations. For freedom is inconceivable without the persons enjoying this freedom having a sense of responsibility. Of course this responsibility should be mentioned in constitutional regulations but a detailed formulation of the right to freedom of information is bound to entail such further definition of this responsibility that the legislator is apt to render this freedom ineffective. Thus in the Netherlands the best guarantee for the freedom of the press is not the letter of the article concerned of the Netherlands Constitution but the deep-rooted

legal conviction of the Dutch people and the resultant reserve of the ordinary legislator in the field of repression.

As an in every respect satisfactory, clearly defined, formulation of the freedom of information has appeared to be an impossibility even in Netherlands legislation, attempts at an international codification should be regarded with some scepticism. It should be premised that the idea of including this fundamental principle in a convention is undoubtedly an attractive one. The importance of article 14 of the Draft First International Covenant on Human Rights (E/1992) should be valued highly as a declaration of principles; in the opinion of the Netherlands Government the principle has been very well worded in this article.

As soon as it is tried to lay down in detail the freedom which one envisages to guarantee - which as a rule would mean the imposing of restrictions - the preliminary condition that the contracting parties by the words "freedom" and "democracy" understand the same things, should be complied with. A convention concerning the subject in question can be of considerable importance provided it can be concluded without any difficulty; as soon as a compromise must be made about the fundamental principles the parties concerned have in fact failed in their purpose. However, it would testify to short-sightedness if one should see the freedom of information as an end in itself and lose sight of the responsibility which is inseparably associated with it.

Theoretically it is conceivable that certain minimum standards of freedom are laid down in a convention; for countries that are backward in this respect this would mean a considerable advance, for other countries there would in fact be no change whatever, which has moreover been laid down in article 3 of the draft Convention. If the guiding principle of the countries of the first category would indeed be gradually to attain the Western conception such a first step would indeed have to be welcomed. But the question is that - whatever shades may for the rest be conceivable - in some country the press is either free or its liberty is abridged; the existence of "a little freedom of the press" would be a contradiction in terms.

Another general objection to this kind of convention is that the democracies which have always respected and maintained the rights laid down in such conventions bind themselves never to infringe these rights, whereas dictatorially ruled States which have never fully recognized these rights and will never do so, will not enter into such commitments. This enables the dictatorial regimes to attack democracies when the latter put into effect the principles of the Convention, whereas the dictatorial regimes themselves do not recognize these principles.

An example of the difficulties that may arise when drafting a convention regarding this subject, is paragraph a of article 2. The Netherlands Government are of the opinion that the State must have the right to make provisions for the fighting of the ensnarers of democracy; but this does not mean that a general provision as "protection of national security of the State" should result in an unlimited right of the State to infringe the right to freedom and information. The Netherlands Government think it impracticable to formulate a text which on the one hand aims at preventing the dangers mentioned above concerning paragraph a of article 2 and which on the other hand reserves the liberty to take defensive measures as referred to above.

The general objection of the Netherlands Government to the draft Convention has been set forth above; a second objection is of an opposite character. Netherlands criminal law recognizes two penal offences which are incompatible with the draft Convention, viz. insulting utterances as regards a group of the population or a group of persons only partially belonging to the population, as well as utterances of an abusing blasphemous character hurting the religious feelings of others. The fact that in this respect repressive measures of the court are impossible - and this must be assumed as the Netherlands representatives evoked an explicit interpretation - clashes with the legal conviction prevailing in the Netherlands.

Articles.

Article 1.

The Netherlands Government are of the opinion that the general principle contained in article 1 should be restricted to the media other than radio or T.V. as the latter, which enter directly the privacy of the family circle, are of such a dangerous nature that Governments may not be expected to bind themselves never to limit the freedom of information by means of these media.

The Netherlands Government further object that the rights set forth in the draft Convention shall also apply to foreigners staying in the Netherlands even if these foreigners should be subjects of another Contracting State. The Netherlands Government are of the opinion that every Government should have the right to take action against those foreigners that are guilty of acts which endanger democracy. Consequently the words "and to such of the nationals of every other Contracting State as are lawfully within its territory" should be omitted.

The enumeration at the end of paragraph b of the reasons on the strength of which there may not be any discrimination, makes the impression of being exhaustive; an enunciative formulation should be preferred.

Article 2.

After what has been said about this question in the general introduction the Netherlands Government can be brief as regards this article.

As to the omission of reviling blasphemy and the insulting of groups of the population the Netherlands Government refer to what has been observed in the general introduction.

It is not quite clear whether the draft Convention also precludes civil actions on account of acts that are allowed under the Convention. In case this assumption should indeed be correct, the Netherlands Government take strong objection to it. In that way a civil action on account of unfair advertising would come into collision with the Convention if this unfair advertising cannot be included under the idea "defame a reputation".

Finally an observation concerning the wording of the article:
linguistically points a, h and i clearly belong to the preceding text, the
points b up to and including g however, do not.

Article 5

The "encouraging" of the establishment of some non-official organization
as referred to in this article, is not the task of the Government; it would
be better if the article would speak of supporting initiatives taken by
interested parties.

It should be made quite clear that the article does not envisage to
exclude the legislator from any interference with the elevation of the
journalist profession.

Article 6

On this article the same observations may be made as were made on
paragraph a of article 2 in the general introduction.

Article 7

The Netherlands Government do not deem the provision of paragraph a
very appropriate. The Government may be apt to make the development and
protection of "national news enterprises" subservient to propagating its own
policy.

In a number of other countries the important press-agencies are under
direct or indirect influence of the Government; the provision in question may
encourage this unhealthy situation to continue indefinitely.

Article 11

In these days the existence of an emergency is rather rule than exception;
consequently the idea "public emergency" should be more accurately defined.

Concluding observations

The Netherlands Government are aware of the fact that they have set out their objections to the draft Convention without taking into account the laborious way in which it was drawn up. The exertion and the patience the deputies bestowed on the subject during the various conferences deserve great commendation. The draft was bound to be in the nature of a compromise; however, as regards the freedom of information there are a number of fundamental ideas which by their very character simply cannot be regulated on the basis of a compromise.