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

Legal Problems Raised by Certain Amendments to the Draft Convention

Relevant Provisions of National Legislations and
Extracts of Judicial Decisions Limiting
Freedom of Information

NOTE: The purpose of the present survey is to give examples of relevant provisions of national legislation related in substance to the amendments, referred to in resolution A of the Committee on the Draft Convention on Freedom of Information. The survey is not exhaustive. The sources of information which were used are given in footnotes. Translations, where necessary, have been made by United Nations Secretariat.

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PART I

National Legislation and Jurisprudence Limiting Freedom
of Information with regard to:

"Matters likely to injure the feelings of the
nationals of the State"

AUSTRIA

Penal Code of 27 May 1852 as amended^{1/}

Disturbance of Religion

Art. 122. The crime of disturbance of religion is committed by:

(a) any person who blasphemes against God by word or act or in print or disseminated writing;

(b) any person who disturbs a religious observance carried on in the State or who, by irreverent treatment of objects used in religious services, or by acts, words, print or disseminated writing, publicly exhibits contempt for religion;

.....

(d) any person who attempts to spread disbelief.

Insult to a Legally-recognized Church or Religious Community

Art. 203. Any person who publicly or before a number of persons, or by means of print, disseminated pictorial representations or other writings, ridicules or attempts to disparage the doctrines, customs or institutions of a church or religious community legally-recognized in the State, or who insults a minister thereof in the exercise of his religious office, or who, during a religious ceremony conducted in public, conducts himself in an unseemly manner likely to scandalize others, shall, unless such act constitutes the crime of disturbing religion (article 122), be guilty of an offence punishable by detention for one to six months.

^{1/} Freedom of Information, A compilation, Vol. II. Texts Communicated by Governments, United Nations Publications, Sales No. XIV.1, 1950, p. 158, to be referred to hereafter as "Freedom of Information, Vol. II."

BRAZIL

Penal Code of Brazil, of 7 December 1940^{1/}

Title V - Offences against religious sentiment and against the respect due to the dead

Chapter I - Offences against religious sentiment

Art. 208. (Outrage against worship and the prevention or disturbance of religious services). Publicly ridiculing any person on the grounds of his religious belief or office; preventing or disturbing any religious ceremony or service:

Penalty: detention for one month to one year or a fine of 500.000 to 3.000.000 reis.

Single paragraph: If violence is used, the penalty is increased by one-third, without prejudice to the penalty for the use of violence.

Chapter II - Offences against the respect due to the dead

Art. 209. (Prevention or disturbance of funeral ceremonies). Preventing or disturbing any burial or funeral ceremony:

Penalty: detention for one month to one year or a fine of 500.000 to 3.000.000 reis.

Single paragraph. If violence is used, the penalty is increased by one-third, without prejudice to the penalty for the use of violence.

Art. 210. (Violation of graves). Violating or profaning any grave or funeral urn:

Penalty: Imprisonment for one to three years and a fine of 500.000 to 3.000.000 reis.

Art. 211. (Destruction, removal or concealment of a dead body). Destroying, removing or concealing a dead body or part thereof:

Penalty: Imprisonment for one to three years and a fine of 500.000 to 3.000.000 reis.

Art. 212. (Desecration of a dead body). Desecrating the body or ashes of a deceased person:

Penalty: Detention for one to three years and a fine of 500.000 to 2.000.000 reis.

^{1/} Códigos Penales Iberoamericanos, Estudio de Legislación comparada, by Luis Jiménez de Asua, vol. I, 1946, p. 605.

COLOMBIA

Penal Code of 1937^{1/}

Title XI - Offences against personal freedom and other fundamental rights

Chapter VIII - Offences against religious sentiment and against the respect due to the dead

Art. 312. Any person who, by physical or moral force, compels another to perform particular acts of worship or to attend the ceremonies of a particular faith, shall be liable to imprisonment for one to three months and a fine of 200 pesos.

Similarly, any person who in the manner described in the foregoing paragraph prevents another from performing particular religious rites or from attending the ceremonies of a particular faith, shall be liable to the same penalties.

If the offender is a public official, these penalties shall suffer an increase not exceeding half the term or amount stated.

Art. 313. Any person who prevents or disturbs, by threats, outrages or expressions of contempt or abuse, the conduct of religious ceremonies or rites of any faith tolerated in the country, shall be liable to imprisonment for one to six months and a fine of 20 to 200 pesos.

Art. 314. Any person who destroys, profanes or in any way publicly desecrates, by expressions of contempt or abuse, objects of worship or symbols of any religion tolerated in the country, or who injures or molests another in his capacity as minister of such a faith, shall be liable to imprisonment for two months to one year and a fine of 20 to 500 pesos.

Art. 315. Any person who desecrates a corpse or the mortal remains of a person, or who removes them from a grave or violates the grave for offensive or unlawful purposes, shall be liable to imprisonment for six months to two years.

^{1/} Codigos Penales Iberoamericanos, Estudio de Legislacion comparada, by Luis Jimenez de Asua, vol. I, 1946, p. 683.

EGYPT

Penal Code^{1/}

Chapter XI

Offences relating to worship

Art. 160. A term of imprisonment not exceeding one year or a fine not exceeding 50 Egyptian pounds shall be imposed on:

1. Anyone who disturbs the practice of a religion or the religious ceremonies pertaining thereto, or interferes with such religion by deed or threat; ...

Art. 161. The same penalties shall apply to any offence against a publicly professed religion committed by one of the means referred to in Article 171 [i.e. by words or shouts uttered in public, by means of public acts or gestures, or by means of writings, drawings, paintings, photographs, emblems or any other means of representation shown in public, or by any other means of publicity].

The provisions of this Article shall apply to:

1. The printing or publication of any book regarded as holy by one of the publicly professed religions if the text is altered deliberately with a view to distorting its meaning;

2. The imitation of a religious ceremony or act in a public place or at a public meeting with a view to casting ridicule on such ceremony or act or providing entertainment for the spectators.

GUATEMALA

Decree No. 666, 24 September 1949, amending Penal Code^{2/}

Art. 126. The following persons shall be liable to imprisonment for a term of one year:

...

2. Any person publishing or disseminating by any means false or distorted news which seriously disturbs public order or threatens national sovereignty;

^{1/} Repertoire permanent de legislation egyptienne, Tri., 2nd edition, June 1938.

^{2/} Yearbook on Human Rights, 1949, p. 89.

INDIA

Indian Penal Code of 1860^{1/}

Trespassing on burial places, etc.

Sec. 297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby,

commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,

shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, etc., with deliberate intent to wound religious feelings

Sec. 298. Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Sec. 505. Whoever makes, publishes or circulates any statement, rumour or report, -

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility;

shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Exception.- It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

IRAN

Act concerning the Press of February 1908^{2/}

Sec. 13. The authors of articles contrary to the Islamic faith and religion published in a newspaper or other publication shall be liable to a fine of not less than 10 or more than 300 tomans

1/ Sapru, Encyclopaedia of General Acts and Codes of India, "Criminal Law and Procedure", Vol. II, pp. 241-242 and 386.

2/ Freedom of Information, Vol. II, p. 60.

/Act concerning

Act concerning the Supervision of the Press of October 1922^{1/}

Sec. 1. Whereas under article 20 of the Constitution the publication of printed works with the exception of writings containing errors and texts likely to be prejudicial to the Islamic religion is not prohibited, all managing editors of newspapers and periodicals and all proprietors of printing houses shall be obliged, whenever they wish to print a text containing a statement, or a story, or jokes, the principal or secondary subject of which is the Islamic faith or religion, to submit them for the approval of the magistrate responsible for supervising the application of the religious laws.

Sec. 2. Whenever the managing editor of a newspaper or periodical or the proprietor of a printing house or any other person infringes the provisions of the foregoing section, the case shall be brought, on the complaint of the Public Prosecutor or of a private person, before the magistrate responsible for supervising the application of the religious laws or the Mussulman judge ...

THE NETHERLANDS

Penal Code of 1886, as amended^{2/}

BOOK TWO

Offences

CHAPTER V

Breaches of the peace

Art. 147. A term of imprisonment not exceeding three months or a fine not exceeding 120 florins shall be incurred by:

1. any person publicly making contemptuous and blasphemous utterances offensive to religious feelings, either by word of mouth or in writing;
2. any person ridiculing a person officiating in the conduct of a religious ceremony in the lawful performance of his functions;
3. any person deriding objects consecrated to the performance of a religious service at the place where and at the time when the performance of that service is permitted.

Art. 147a. Any person disseminating, publicly exhibiting or displaying, or holding in stock for the purpose of being disseminated or publicly exhibited or displayed, a piece of writing or picture containing contemptuous and blasphemous references offensive to religious feelings shall, if he knows or has serious

1/ Freedom of Information, Vol. II, p. 64.

2/ Het Wetboek Van Strafrecht. (1947).

/reason to

reason to suppose that the piece of writing or picture contains such references, be liable to imprisonment for a term not exceeding two months or a fine not exceeding 120 florins.

The same penalty shall be incurred by any person who with such knowledge or such reason for supposition causes the contents of such a piece of writing to be heard in public.

If the offender commits one of the offences described in this article in the course of his professional activities, and if, at the time when the offence is committed, less than two years have elapsed since the confirmation of a previous sentence passed upon him for one of these offences, he may be debarred from the exercise of his profession.

Art. 148. Any person wilfully preventing or hindering lawful access to a place of burial or the lawful carriage of a body to a place of burial shall be liable to imprisonment for a term not exceeding one month or a fine not exceeding 120 florins.

Art. 149. Any person wilfully defacing a grave or wilfully or unlawfully destroying or damaging any monument erected in a place of burial shall be liable to imprisonment for a term not exceeding one year.

NICARAGUA

Penal Code of 1891, as amended^{1/}

Title III - Offences against religion

Art. 205. Any person who commits any of the following acts shall be deemed to have committed an offence against religion, that is to say if he:

1. by acts or threats, and without proper authority, interferes with the exercise of a religious faith in any of its forms;
2. wilfully overturns, demolishes, renders useless or destroys consecrated objects in holy places or buildings;
3. without just cause, physically maltreats a minister of religion, or insults or abuses him in the exercise of his functions. (Art. 6, Const.)

Art. 207. The offence of intolerance shall be deemed to be committed by any person who:

1. forces another to change his religious belief or practice, through the application of material pressure, threats, reproaches or other measures likely to annoy the person in question;

^{1/} Códigos Penales Iberoamericanos. Estudio de Legislación comparada, by Luis Jiménez de Asúa, vol. II, 1946, p. 270.

2. disturbs another in the exercise of his religious faith, whether publicly or privately, by any means sufficient to cause that person to interrupt his religious devotions, or annoy him or distract his attention. (Arts. 6 and 13 Const.)

POLAND

Decree No. 334 of 5 August 1949 concerning protection of the freedom of conscience and religion 1/

Art. 5. Any person who offends religious feelings by insulting in public any object of worship, or the site dedicated for performing religious ceremonies is liable to a penalty of imprisonment for a term not exceeding five years.

SWEDEN

Constitutional Act Relating to Freedom of the Press of 23 March 1949^{2/}

Chapter 7

Offences against Freedom of the Press

Art. 4. Having due regard for the purpose of freedom of the Press as stated in chapter 1, the following utterances in print are forbidden when punishable by law:

(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;

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

SWITZERLAND

Cantonal Legislation

Canton Appenzell l. Rh.

Offences against Public Order^{3/}

Art. 42. Any person producing printed matter, photographs, pictures, films

1/ Yearbook on Human Rights, 1949, p. 173.

2/ Freedom of Information, Vol. II, p. 69.

3/ Ibid. p. 81.

/or other

or other objects likely to incite or encourage the commission of crimes or offences, to exercise a grossly demoralizing influence, to disturb their religious peace or otherwise give great offence, and any person publicly exhibiting or circulating such objects, shall (of this Canton) be punishable by imprisonment or fine.

TURKEY

Act concerning the Press as amended on 20 September 1946^{1/}

Art. 30. All persons publishing articles which offend national feelings or give false information to this end, shall be fined not less than LT300 [Turkish pounds].

Penal Code^{2/}

Art. 163. Persons who exploit religion or religious feeling to incite the people to acts which may jeopardize the security of the State, and persons who form associations with such ends, are liable to a heavy term of imprisonment, even where such incitement or association remains without positive result.

UNITED KINGDOM

a. Statutes

1. Blasphemy and Profanity Suppression. (1697-8), 9 Will. 3 C. 35^{3/}

An Act for the more effectual suppressing of Blasphemy and Profaneness

Whereas many persons have of late years openly avowed and published many blasphemous and impious opinions contrary to the doctrines and principles of the Christian religion greatly tending to the dishonour of Almighty God and may prove destructive to the peace and welfare of this kingdom Wherefore for the more effectual suppressing of the said detestable crimes be it enacted by the Kings most excellent Majesty by and with the advice and consent of the lords spiritual and temporal and the commons in this present Parliament assembled and by the authority of the same that if any person or persons having been educated in or at any time having made profession of the Christian religion within this realm shal by writing printing teaching or advised speaking . . . assert or maintain there are more gods than one or shal deny the Christian religion to be true or the Holy Scriptures of the Old and New Testament to be of divine authority and shal upon indictment or

1/ Freedom of Information, Vol. II, p. 89.

2/ Ibid. p. 180.

3/ Halsbury's Statutes of England, Second Edition, (1949), Vol. 5, p. 514.

information in any of His Majesties courts at Westminster or at the Assizes be thereof lawfully convicted by the oath of two or more credible witnesses such person or persons for the first offence shall be adjudged incapable and disabled in law to all intents and purposes whatsoever to have or enjoy any office or offices employment or employm ecclesiastical civil or military or any part in them or any profit or advantage appertaining to them or any of them Any if any person or persons so convicted as aforesaid shall at the time of his or their conviction enjoy or possess any office place or employment such office place or employment shall be voyd and is hereby declared void And if such person or persons shall be a second time lawfully convicted as aforesaid of all or any the aforesaid crime or crimes that then he or they shall from thenceforth be disabled to sue prosecute plead or use any action or information in any court of law or equity or to be guardian of any child or executor or administrator of any person or capable of any legacie or deed of gift or to bear any office civil or military or benefice ecclesiastical for ever within this realm and shall also suffer imprisonment for the space of three years without bail or mainprize from the time of such conviction.

Notes:

(1) The words omitted were repealed by 53 Geo. 3 c. 160 (1812-3), s. 2 (repealed). This Act does not alter the Common Law offence of blasphemy (*A.-G. v. Pearson* (1817), 3 Mer. 353; 15 Digest 733, 7915; *R. v. Carlile* (1819), 3 B & Ald. 161; 15 Digest 733, 7916), as to which, see 9 Halsbury's Laws (2nd Edn) 387.

(2) No prosecutions have in modern times been instituted under the provisions of those Acts or of this Act.

2. The Criminal Libel Act, (1819), 60 Geo. 3 & 1 Geo. 4 c. 81/

An Act for the more effectual Prevention and Punishment of blasphemous and seditious Libels

After verdict, etc., against any person for composing, etc., a blasphemous or seditious libel, the court may make order for the seizure of copies of the libel in possession of such person, etc.-- . . . In every case in which any verdict or judgment by default shall be had against any person for composing, printing, or publishing any blasphemous libel, or any seditious libel tending to bring into hatred or contempt the person of his Majesty...or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or to excite his Majesty's subjects to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means, it shall be lawful for the judge or the court before whom or in which such verdict shall have been given, or the court in which such judgment by default shall be had, to make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of the person against whom such verdict

1/ Halsbury's Statutes of England, Second Edition, Vol. 13, p. 1122.

or judgment shall have been had, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court or judge, that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace, or for any constable or other peace officer, acting under any such order, or for any person or persons acting with or in aid of any such justice of the peace, constable, or other peace officer, to search for any copies of such libel in any house, building, or other place whatsoever belonging to the person against whom any such verdict or judgment shall have been had, or to any other person so named in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody, until the same shall be restored under the provisions of this Act, or disposed of according to any further order made in relation thereto.

Notes:

Blasphemy and blasphemous libel. Blasphemy is the offence of scoffingly or irreverently ridiculing or impugning the doctrines of the Christian faith. Blasphemous libel occurs where blasphemous statements are written (see 9 Halsbury's Laws (2nd. Edn.) 388, and, for cases, see 15 Digest 733-735, 7914-7949).

3. The Law of Libel Amendment Act (1888), 51 & 52 Vict. c. 61/

An Act to amend the Law of Libel

....

3. Newspaper reports of proceedings in court privileged.--A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter.

b. Case Law^{2/}

Blasphemous libel

In English common law, blasphemous libel is a misdemeanour punishable with fine or imprisonment and consists, generally, in speaking, writing or publishing with intent to shock and insult believers, any scurrilous or profane words

1/ Halsbury's Statutes of England, 2nd. Edn., Vol. 13, p. 1143.

2/ Common Law cases cited under this heading were taken from Halsbury's Statutes of England, 2nd. Edn., (1949) vol. 5, and Odgers in Libel and Slander, 6th ed., (1929).

vilifying or ridiculing God, Jesus Christ, the Holy Ghost, the Old or New Testament, or Christianity in General. 1/

The essence of the crime consists in the publication of words concerning the Christian religion so scurrilous and offensive as to pass the limits of decent controversy, and to be calculated to outrage the feelings of any sympathiser with Christianity. 2/

In the crime of blasphemous libel, the defendant cannot plead a justification: nor can he be permitted at the trial to argue that his blasphemous words are true. 3/

Blasphemy in Common Law 4/

The early Common Law cases show that "disturbance of the peace" or "the danger to the existence of the State" were the basis for the prosecution and punishment of the crime of blasphemous libels. It was pointed out that blasphemous preaching and writing led to dangerous outbreaks of fanaticism and the State had, therefore, a direct interest in their suppression. The case of R. v. Taylor 5/ ruled that blasphemous words were not only an offence to God and religion, but a crime against the laws, State and Government, and, therefore, punishable in this Court.

The case of R. v. Taylor was not later extended making criminal liability dependent upon "the heretical character of the opinions expressed" and that "whatever strikes at the very root of Christianity tends manifestly to a dissolution of the civil government". 6/ In 1915, in the case of Re Bowman 7/ it was held that any man may, without subjecting himself to any penal consequences soberly and reverently examine and question the truth of those doctrines, and would not therefore be punishable for blasphemy at common law. The law therefore ceased to interfere with man's religious opinions. The basis for the punishment for the crime of blasphemous libel which, in early times, constituted the "danger to the State" has thus been substituted with the element of: "Malicious intent to insult the religious feelings of others by profanely scoffing at all they hold sacred". 3/

1/ Bowman v. Secular Society, Ltd., (1917) A. C. 406; 86 L. J. Ch. 565.

2/ R. v. Cott (1922), 16 Cr. App. Rep. 87.

3/ R. v. Davidson (1821), 4 B. & Ald. 329; Cooke v. Hughes, Ry. & Moo. 115.

4/ See Odgers on Libel and Slander, Sixth Edition, at pp. 396-404.

5/ 1 Ventr. 293.

6/ R. v. Woolston, 1 Barnard, 162, 266.

7/ Re Bowman, 2 Ch. p. 403.

8/ See Odgers on Libel and Slander, Sixth Edition, pp. 396-404.

UNITED STATES

California Penal Code^{1/}

Section 258. Slander is malicious defamation orally uttered ... by radio ... or other means ... tending to blacken the memory of one who is dead, or to impeach the ... reputation ... of one who is living, or any educational, literary, social, fraternal, benevolent or religious corporation, association, or organization ...

Indiana Statute^{2/}

Section 10-904. It is the policy of the state to protect the welfare and rights of its citizens by preventing racketeering in hatred.

Section 10-905. A. It shall be unlawful ... to conspire ... for the purpose of advocating ... or disseminating malicious hatred by reason of race, color, or religion ... for or against any person, persons, or group of persons, individually or collectively ...

Section 10-906. Violators shall be deemed guilty of racketeering in hatred and liable to a maximum penalty of disfranchisement for ten years, \$10,000 fine, and two years in jail.

Section 10-907. This section provides the equitable remedy discussed below.

Section 10-908. Corporations cannot be chartered, nor foreign corporations allowed to do business in the state, for the purpose of violating 10-905.

Section 10-909. Domestic corporations acting in violation of section 10-905 shall forfeit their charters.

Section 10-912. The term "hatred" as used in this act shall mean and include malevolent ill-will, animosity, odium....

Section 10-913. No provision of any section of this act shall be construed to prohibit any right protected by the federal constitution ... including, but not limited to rights of freedom of speech, freedom of the press, and freedom of religion.

1/ Cal. Pen. Code, chap. 11, (1941).

2/ Ind. Stat. para. 10-904-914 (Burns 1933).

Mississippi Statute^{1/}

Section 1. Any person who individually, or as a member of any organization, association, or otherwise, shall intentionally preach, teach, or disseminate any teachings, creed, theory, or set of alleged principles, or ally, or by means of a phonograph or other contrivance of any kind or nature, or ... by speech, letter, map or picture which would incite any sort of racial distrust, disorder, prejudices or hatred ... shall be guilty of a felony and punished by imprisonment in the State penitentiary until treaty of peace be declared by the United States but such imprisonment shall not exceed ten years.

Judicial Decision

Taylor vs. Mississippi^{2/}. Held: the Mississippi statute is unconstitutional. The pertinent wording of the phrase "by speech, letter, ~~map~~ or picture which would incite any sort of racial distrust, disorder, prejudices or hatred", is too general and not specific enough. That statute could be construed as to make it a criminal offence for persons to communicate to others views and opinions respecting governmental policies, and prophecies concerning the future of our own and other nations ... and that ... it would punish them although what they communicated is not claimed or shown to have been done with an evil or sinister purpose, to have advocated or incited subversive action against the nation or state, or to have threatened any clear and present danger to our institutions.

New York Statute^{3/}

A person who wilfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health or which openly outrages public decency, for which no other punishment is expressly prescribed by this chapter, is guilty of a misdemeanor ...

Judicial Decision

People vs. Edmondson^{4/}. Held: the New York statute does not, on its face, extend the protection of the law to groups. The question now to be considered is whether or not the statute has been or should be extended by judicial construction so as to sustain indictment for invective directed against such larger groups, such as all the Jews, or all the Christians, or all the Democrats, or all the Republicans.... In view of the general wording of the phrases contained in the statute, grave doubts exist as to the possibility of its applicability to cases involving religious, racial or national discrimination. ^{5/}

1/ 319 U.S. 581

2/ 319 U.S. 583

3/ Section 2090, New York Penal Code, 188, N.Y. 478, 81 N.E. 459 (1907)

4/ 4 N.Y.S. 2d, p. 260

5/ Thanehaus, "Group Label", Cornell Law Quarterly, vol. 35, 1950, p. 287.

URUGUAY

Penal Code (Chapter V), 4 December 1933^{1/}

Offences against freedom of worship and against religious sentiment.

Art. 304 - (Acts offensive to worship through interference with or disturbance of a religious ceremony). Any person who in any way interferes with or disturbs a religious ceremony, a rite, or an act of worship of any one of the religions tolerated in the country, whether performed in a place of worship, in a place open to the public or in private premises, in the latter case in the presence of a minister of the faith, shall be liable to imprisonment for three to eighteen months.

Art. 305 - (Acts offensive to worship through the desecration of the place or objects of worship). Any person who in any way, by word or deed (including damage or destruction), gives offence to any of the religions tolerated in the country by desecrating objects venerated by that religion or objects used for religious rites in places of worship, shall, if the offence is committed in public or owing to its scandalous nature becomes a public affair, be liable to imprisonment for six to twenty-four months.

Art. 306. - (Acts offensive to worship through public abuse of persons professing a particular faith or of the ministers of the faith). Any person who in any way gives offence to any of the religious faiths tolerated in the country or publicly abuses its ministers or persons professing it, shall be liable to imprisonment for three to twelve months.

Art. 308. - (Desecration of graves, urns or objects used for the reverence of the dead). Any person who commits any act of desecration upon a grave, urn or objects designed for its protection or adornment or for the reverence of the dead, or who disfigures or impairs the beauty of such objects or desecrates them by abusive inscriptions shall be liable to imprisonment for six months to five years in a penitentiary.

^{1/} Códigos Penales Iberoamericanos. Estudio de Legislación comparada,
by Luis Jiménez de Asúa, vol. II, 1946, p. 773.

PART II

National Legislation and Jurisprudence Limiting Freedom
of Information with regard to

"False or Distorted Reports which Undermine
Friendly Relations Between Peoples or
States"

AUSTRIA

Penal Code of 27 May 1852 as amended^{1/}

Art. 308. Any person who spreads or disseminates false rumours which he has no good reason to believe to be true, and which tend to disturb the public peace or which tend to influence unfavourably public opinion abroad with respect to conditions in the country; likewise, any person who spreads or disseminates an alleged prediction of like nature, unless such act is punishable by a mere severe penalty; shall be guilty of a misdemeanour and shall accordingly be punished by detention for eight days to three months. An alien found guilty of the aforesaid misdemeanour shall be liable to deportation from the territory of the State.

BELGIUM

Belgian Congo

Legislative Order No. 254/Telec. on Telecommunications of 23 August 1940^{2/}

Chapter II. Radio-Communications

Art. 27. The following are prohibited:

5. The broadcasting of signals and communications which are liable to endanger the security of the State, or which are contrary to public order or morality, or which constitute an outrage against the convictions of others or an offence against a foreign State;

^{1/} Freedom of Information. Vol. II, p. 158;

^{2/} Ibid. p. 106.

CANADA

The Criminal Code, 1892, as amended^{1/}

Art. 135. Everyone is guilty of an indictable offence and liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile or expose to hatred and contempt, in the estimation of the people of any foreign State, any prince or person exercising sovereign authority over such State.

COLOMBIA

Decree No. 1966 of 1946 regulating Radiocommunications Services^{2/}

Chapter I. General Provisions

Art. 10. No radiocommunications station may transmit anything which might be prejudicial to public morality, national security or international relations, the honour and security of persons and the respect due to the lawful authorities or which contains false or tendentious reports of any form of incitement to disrespect for the authorities, disobedience of the law or disturbance of public order.

Act No. 29 Concerning Press Regulations of 15 December 1944^{3/}

Art. 33. Any person publishing without the permission of the Minister of Foreign Affairs information on the course of diplomatic negotiations being conducted by the country shall be liable to a fine of 500 to 2000 pesos.

The foregoing shall not prevent journalists or writers from discussing the interests of the country in its relations with foreign powers.

Art. 46. Where calumny or insult against the head of a foreign nation or his diplomatic representative is charged, proceedings shall be had only on complaint by such representative or at the instance of the Ministry of Foreign Affairs and on production of evidence that, except the Vatican City, reciprocity in such matters is afforded by the nation to which the complainant belongs.

1/ Freedom of Information, Vol. II, P. 165.

2/ Ibid, p. 111.

3/ Ibid, p. 21.

COSTA RICA

Police Code of 21 August 1941^{1/}

Chapter III. Offences against a friendly nation and its government and representatives.

Art. 87. Any person who, by word of mouth, in writing or in any other form, publicly offends the honour or repute of any friendly nation, or slanders or insults its Head of State or diplomatic representatives, shall be liable to arrest for thirty to 180 days or a fine of 80 to 350 colones, if the act does not otherwise constitute an offence.

If a complaint is lodged, the Public Prosecutor shall, on the request of higher authority, institute the relevant proceedings.

CUBA

Code of Social Defence of 1938^{2/}

Title II - Offences against international peace, international law and the freedom and security of the seas.

Chapter I. Offences against international peace and international law.

Art. 162 (a). Any person who, in the absence of a declaration of war, commits within the territory of the Republic, any act directly intended to impair the independence, territorial integrity or stability of the government of a foreign state, shall be liable to imprisonment for three to six years.

(b) Any person who, in the absence of a declaration of war, commits within the territory of the Republic an offence against the head of a foreign state, shall be liable to the penalty applicable to the offence plus one-third to one-half of the penalty.

(c) This provision shall apply to offences committed within the territory of the Republic against the diplomatic representatives of a foreign state while these are performing their duties.

(d) Any person who violates the personal immunity or the domicile of the head of another state who is visiting the Republic on official business, or of an accredited diplomatic representative of another Power, shall be liable to imprisonment for two to six years.

1/ Códigos Penales Iberoamericanos, Estudio de Legislación comparada, by Luis Jiménez de Asúa, Vol. I, 1946, p. 832.

2/ Ibid. p. 891.

(e) If the offender can only be prosecuted at the suit of the offended party, proceedings shall only be instituted at the latter's request, or on the initiative of the Government of the Republic.

Art. 163 (a). Any person who publicly incites the Cuban people to a war of aggression against a foreign nation shall be liable to imprisonment for one to three years.

(b) Any person who, during the course of diplomatic negotiations for the peaceful settlement of an international dispute, foments popular feeling for the purpose of exerting pressure upon the Government in favour of war, shall be liable to imprisonment for six months and a day to two years.

(c) Any person who spreads false reports by means of the press or the radio, for the purpose of disturbing international peace or the good relations of the Republic with any other nation, shall be liable to imprisonment for three months and a day to one year, or a fine of 90 to 200 pesos.

Art. 164. Any person who, in time of war, commits any of the following offences shall be liable to imprisonment for six months and a day to three years, that is to say if he:

(a) fails to respect the inviolability of ambulances, hospitals and concentration camps for wounded, sick or prisoners;

(b) withholds the necessary assistance to wounded, sick, persons admitted to hospitals, or prisoners of war;

(c) attacks in any way ships, trains or aircraft used for hospital services or the transportation of wounded, shipwrecked persons or prisoners;

(d) prevents official welfare agencies, whether national, foreign or international, from carrying out their proper duties.

Art. 165. Any person who publicly tears down or destroys the flag, coat of arms or other emblem of a foreign state as an act of contempt towards that state, or insults them, shall be liable to imprisonment for thirty-one days to six months, or a fine of 31 to 180 pesos, or both.

CZECHOSLOVAKIA

Act No. 165 of 20 December 1950 Concerning the Defence of Peace 1/

The National Assembly of the Czechoslovak Republic has agreed on the following Act:

The Czechoslovak people ...

... has already given clear expression in its new people's democratic laws to its determination to preserve the peaceful co-existence of peoples and to

1/ Collection of Laws of the Czechoslovak Republic, Issue 68 of 24 December 1950, p. 683.

punish all those who threaten the peace. Conscious that the instigators of a new war are redoubling their warlike threats and their propaganda for a new war, and are now passing to overt acts of aggression, the Czechoslovak people promulgates an Act for the defence of peace, in order thereby to affirm once again and to pursue even more actively its efforts for world peace and international solidarity.

Now therefore, it is hereby resolved:

Art. 1. - 1. Any person who attempts to disturb the peaceful co-existence of the peoples by any form of instigation to war or war propaganda, or who otherwise supports war propaganda, shall be guilty of a crime against peace.

2. Any person committing such an offence shall be punished by deprivation of liberty for one to ten years. Where the acts referred to in paragraph 1 are committed by any person

- (a) as a member of an association
- (b) on a considerable scale, or
- (c) where there are other aggravating circumstances the punishment shall be deprivation of liberty for ten to twenty-five years.

DOMINICAN REPUBLIC

a. Statutes.

Act No. 1951 of 2 March 1949 for the regulation of public entertainments and radio broadcasts 1/

Art. 2. The regulations referred to in the foregoing article may ban entertainments, cinematographic exhibitions and radio broadcasts, or portions thereof, which are offensive to public decency or morality, or prejudicial to relations with friendly countries or generally which are likely to have a detrimental effect on the principles and standards of the Dominican People.

Regulations Governing Public Entertainments and Radio Broadcasts 2/

Art. 31. The National Public Entertainments and Broadcasting Commission shall on no grounds grant permission to films and theatrical works which offend, ridicule or criticize, or which are derogatory to, or hold up to international scorn or defame friendly nations or national or foreign heads of state, or which tend to distort facts or misplace emphasis or which tend in an excessive or misleading manner to misrepresent the habits and customs of other countries maintaining good relations with the Dominican Republic.

1/ E/CN.4/Sub.1/107/Add.4, page 2.

2/ Ibid. pp. 5, 6.

b. Judicial Decision: Case (192-7)^{1/}

The journalists M.A.P. and M.R.O. were sentenced, the former on a charge of libel and slander, under article 369 of the Penal Code, against the memory of the late President of a foreign state, W.G.H., of the United States of America, and the latter on a charge under articles 84 and 85 of the same Code for an act disapproved by the Dominican Government - namely, having published in the newspaper La Prensa an article signed by the former containing the above-mentioned slander and libel.

The Court condemned M.A.P. to six months' correctional imprisonment and a fine of 50 pesos for the offence of slander against the memory of the said deceased ... and M.R.O. to the penalty of three years' exile for having committed an act disapproved by the Dominican Government, 'exposing the Republic to a declaration of war.

Appeal: Whereas article 84 of the Penal Code states that any person who, by reason of hostile acts disapproved by the Government, exposes the Republic to a declaration of war, shall be punished...; considering that before article 84 of the Penal Code may be applied, it must be established that the accused has committed one or more material acts against the rights of a State and further, that such acts are of sufficient gravity to give rise to a declaration of war; that such conditions are not fulfilled in the case of offences committed against a State by means of the spoken or written word; that therefore in the case of the accused M.R.O., publication in his newspaper of the writings of the accused M.A.P. was not a hostile act against the (foreign) State of a nature to expose the Republic, etc...; and that therefore with regard to the accused M.R.O. the judge also made an erroneous application of the law and imposed a penalty for an act not punishable by law.

The sentence is quashed. (As regards the first accused, sentence was also quashed on the grounds that both article 367 and article 369 of the Penal Code refer to living persons, and that the words considered by the judge to be slanderous or libellous referred not to the head of a friendly nation but to a deceased person who held that position when alive.)

EGYPT

Penal Code of 31 July 1937^{2/}

Chapter XIV

Crimes and offences committed through the press, etc.

Article 171. Anyone who, by words or shouts uttered in public, by means of public acts or gestures, or by means of writings, drawings, paintings,

1/ Freedom of Information, Vol. II p. 191

2/ Repertoire permanent de législation égyptienne, Tri., 2nd edition, June 1938.

photographs, emblems or any other means of representation shown in public, or by any other means of publicity, directly provokes a person or persons to commit an act acknowledged as a crime or offence, shall be liable to punishment as an accomplice in such crime or offence, if the provocation has been followed by action.

.....

Article 181. Anyone who commits an offence by one of the above-mentioned means against the person of a foreign sovereign or head of State shall be liable to a term of imprisonment not exceeding two years.

.....

Article 182. Anyone who insults, by the above-mentioned means, the accredited representative of a foreign State in Egypt in connexion with matters pertaining to the exercise of his functions, shall be liable to a term of imprisonment not exceeding one year and a fine of 20 to 100 Egyptian pounds, or to one of these penalties only.

Article 188. Anyone who publishes with malicious intent, by one of the above-mentioned means, any false news, or information which is fabricated, falsified, or mendaciously attributed to third persons, shall be liable to a term of imprisonment not exceeding eighteen months and to a fine of 50 to 200 Egyptian pounds, or to one of these penalties only, if such news or information is liable to disturb the peace or is prejudicial to the public interest.

FRANCE

Act concerning the Freedom of the Press of 29 July 1881^{1/}

Offences against Heads of States and Foreign Diplomatic Agents

Art. 36. Insults uttered publicly against the heads of Foreign States, heads of foreign Governments and Ministers of Foreign Affairs of foreign Governments shall be punishable by imprisonment of not less than 3 months or more than 1 year and a fine of not less than 1,000 or more than 1,000,000 francs, or by either of these penalties.

Art. 37. Insults uttered publicly against ambassadors and plenipotentiary ministers, envoys, charges d'affaires or other diplomatic agents accredited to the Government of the Republic shall be punishable by imprisonment of not less than 8 days or more than 1 year and a fine of not less than 1,000 or more than 1,000,000 francs, or by either of these penalties.

Art. 27. The malicious publication, dissemination or reproduction by any means of false reports or documents which are fabricated, forged or falsely attributed to third persons shall be punishable, if a disturbance of public order results or might result from such acts, by imprisonment of not less than 6 months or more than 3 years and a fine of not less than 1,000 or more than 1,000,000 francs, or by either of these penalties.

^{1/} Freedom of Information, Vol. II p. 34.

/The same

The same acts shall be punishable by imprisonment of not less than 1 or more than 5 years and a fine of not less than 12.000 or more than 3.000.000 francs whenever such malicious publication, dissemination or reproduction is calculated to impair the discipline or morale of the armed forces or to impede the nation's war effort.

Art. 60. Proceedings in correctional and ordinary police tribunals shall be governed by the provisions of Book II, Part I, Chapter II. of the Code of Criminal Procedure, with the following modifications:

1. In the event of insult to heads of States or to foreign diplomatic agents, proceedings may be initiated either at their instance or ex officio, on submission of a request through the Minister of Foreign Affairs to the Minister of Justice.

In this event, the provisions of article 49 on the right of seizure and preventive arrest in connexion with the offences provided for in articles 23, 24 and 25 shall be applicable.

GREECE

Constitutional Act No. 87^{1/}

Art. 1. Any person insulting, ridiculing or slandering through the press:

- (a) a foreign government, or
- (b) an ambassador accredited to the Greek Government, or
- (c) a diplomatic representative or envoy of a foreign government

shall be punished by imprisonment of at least 6 months and/or a fine of 200.000 to 50000.000 drs. The same applies to any person who expresses disregard or who provokes hatred or defamation on behalf of the citizens against the persons under (b) and (c) above. The court may also order the temporary closing of the newspaper involved up to a period of 6 months. Closing is compulsory in case of relapse. The prosecution may be opened either by request of the person or the government concerned or by request of the Greek Minister for the Press or by action of the Public Prosecutor.

The protection of the persons under (b) and (c) above begins at the moment when the application of the foreign government for the nomination is filed.

Art. 2. In the case that the Public Prosecutor opens the prosecution either by ex officio or on request of the Greek Minister of the Press, he shall proceed immediately to the confiscation of the newspaper involved. The continuation of the confiscation is decided upon according to the relevant provisions of Article 114 of the Constitution.

1/ Reply of the Greek Government, dated 12 July 1948, to the Secretary-General's circular letter of 7 May 1948 (No. SOA/1/011/ES) with regard to the Third Act of the United Nations Conference on Freedom of Information (Document E/Conf.6/79).

/Law No.

Law No. 5060 of 1931 Regarding Press Matters^{1/}

Art. 18. Any person insulting, ridiculing or slandering a foreign government or an Ambassador accredited to the Greek Government or a diplomatic representative or envoy of a foreign Government shall be punished by imprisonment up to 6 months and/or a fine of 2500 to 25.000 drs. The same applies to any person publishing in the press false information insulting a foreign government. The prosecution is opened either by request of the person or the government insulted or on request of the Greek Minister of Foreign Affairs.

INDIA

Indian Constitution of 26 November 1949^{2/}

Right to Freedom

- Art. 19. (1) All citizens shall have the right
- (a) To freedom of speech and expression;
 - (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court of any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

Constitutional amendment as passed by the Indian Parliament on June, 1951^{3/}

- (a) For clause (2) the following clause shall be substituted and said clause shall be deemed to have been enacted in the following form, namely:

(2) Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercises of a right conferred by said sub-clause in the interest of security of the State, friendly relations with foreign states, public order, decency, or morality, including in particular, any existing or other law relating to contempt of court, defamation or incitement to offence.

Secondly: No law in force in the territory of India immediately before the commencement of the Constitution which is consistent with the provisions of Article 19 of the Constitution as amended by sub-section (1) of this section, shall be deemed to be void, or ever to have become

1/ Reply of the Greek Government, dated 12 July 1948, to the Secretary-General's circular letter of 7 May 1948 (No. SOA/1/011/ES) with regard to the Final Act of the United Nations Conference on Freedom of Information (Document E/CONF.6/79).

2/ Yearbook on Human Rights for 1949, p. 98.

3/ Information supplied by India Delegation to the United Nations, New York.

/void

void, on the ground only that, being a law which takes away or abridges the right conferred by sub-clause (a) of clause (1) of said article, its operation was not saved by sub-clause (2) of that article as originally enacted.

IRAN

Attacks against the Sovereigns and Statesmen of Foreign Countries

Sec. 40. Attacks against the Sovereigns of friendly States are strictly prohibited, any offence rendering the culprit liable to a fine of not less than 10 or more than 300 tomans or to imprisonment for a term of not less than one month or more than one year or, as appropriate, to both these penalties.

Sec. 41. It is unlawful to cast slurs on the honour of foreign officials and members of foreign political assemblies whose status corresponds to that of deputies in this country, and persons guilty of this offence shall be punished by a fine of not less than 5 or more than 200 tomans and imprisonment for a term of not less than one week or more than three months.

Sec. 42. Complaints of foreign nationals may be forwarded either direct to the police or to the Ministry of Justice through the intermediary of the Ministry of Foreign Affairs, or may be taken before the courts.

LIECHTENSTEIN

Defence of the State Act of 14 March 1949^{1/}

Art. 12. If any person publicly insults a foreign State in the person of the head of that State or its diplomatic representative or its Government;

If any person maliciously removes, damages or is guilty of an insult to the national emblem of a foreign State openly displayed by a recognized representative of that State, in particular its coat of arms or its flag, he shall be deemed to have committed an offence, and shall be liable to close detention for a term not exceeding three years or a fine not exceeding 15,000 francs.

MEXICO

1931 Criminal Code of the Federal District of Mexico^{2/}

Chapter II - Breach of immunity and neutrality

Art. 148. A sentence of from three days to two years' imprisonment (prison) and a fine of from one hundred to two thousand pesos shall be awarded for:

1/ Yearbook on Human Rights, 1949, p. 144.

2/ Legislacion Penal Mexicana, compiled and arranged by Andrade, 1938.

I. A breach of any diplomatic immunity, real or personal, or a foreign subject or representative of another nation, whether residing within the Republic or in transit through it;

IV. An attack or violence of any kind on the escutcheons, emblems or flags of a friendly power.

Art. 360. Proceedings shall be instituted against a person guilty of abuse, defamation or slander only upon complaint by the person attacked, except in the following cases:

II. If the offence is against the Mexican nation or a foreign nation or government, or against their diplomatic agents in Mexico. In the first case, proceedings shall be instituted by the Public Prosecutor but in other cases, information must be laid.

THE NETHERLANDS

Penal Code of 1886 as amended.^{1/}

Book Two, Offences

Chapter III - Offences against heads and representatives of friendly States

Art. 115. An attempt on the life or liberty of a reigning prince or other head of a friendly State shall be punishable with a term of imprisonment not exceeding 15 years.

Should the attempt on such a person's life result in death or should it be committed with malice aforethought, a sentence of imprisonment for life or for a term not exceeding 20 years shall be imposed.

Art. 116. Any assault upon the person of a reigning prince or other head of a friendly State which does not come under a more severe penal provision shall be punishable with a term of imprisonment not exceeding six years.

Art. 117. Any wilful insult to a reigning prince or other head of a friendly State shall be punishable with a term of imprisonment not exceeding four years or a fine not exceeding 300 florins.

2/ Het Wetboek Van Strafrecht. (1947).

/Article 118.

void, on the ground only that, being a law which takes away or abridges the right conferred by sub-clause (a) of clause (1) of said article, its operation was not saved by sub-clause (2) of that article as originally enacted.

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Sec. 41. It is unlawful to cast slurs on the honour of foreign officials and members of foreign political assemblies whose status corresponds to that of deputies in this country, and persons guilty of this offence shall be punished by a fine of not less than 5 or more than 200 tomans and imprisonment for a term of not less than one week or more than three months.

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II. If the offence is against the Mexican nation or a foreign nation or government, or against their diplomatic agents in Mexico. In the first case, proceedings shall be instituted by the Public Prosecutor but in other cases, information must be laid.

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Art. 117. Any wilful insult to a reigning prince or other head of a friendly State shall be punishable with a term of imprisonment not exceeding four years or a fine not exceeding 300 florins.

2/ Het Wetboek Van Strafrecht. (1947).

/Article 118.

Article 118. Any wilful insult to a representative of a foreign Power accredited to the Netherlands Government in his capacity as such shall be punishable by imprisonment for a term not exceeding four years or a fine not exceeding 300 florins.

Art. 119. Any person disseminating, publicly exhibiting or displaying or holding in stock for the purpose of being disseminated or publicly exhibited or displayed, a piece of writing or picture containing an insult to the reigning prince or other head of a friendly State or to a representative of a foreign Power accredited to the Netherlands Government, in his capacity as such, if he knows or has serious reason to suppose that the piece of writing or picture contains such an insult, shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding 300 florins.

The same penalty shall be incurred by any person who with such knowledge or such reason for supposition causes the contents of such a piece of writing to be heard in public.

If the offender commits one of the offences described in this article in the course of his professional activities, and if at the time when the offence is committed less than two years have elapsed since the confirmation of a previous sentence passed upon him for one of these offences, he may be debarred from the exercise of his profession.

NEW ZEALAND

The Crimes Act, 1905^{1/}

Art. 120. Libels on Sovereigns of Foreign States. Everyone is liable to one year's imprisonment who, without lawful justification, publishes any libel tending to degrade, revile, or expose to hatred and contempt in the estimation of the people of any foreign State any prince or person exercising sovereign authority over any such State.

PERU

Law of International Security - Decree-Law No. 11049 of 1 July 1949^{2/}

Art. 1. If any person commits any of the following acts in the furtherance of some political or social object, he shall be deemed to have committed an offence against public security and order; that is to say if he:

b. Disseminates by word of mouth, writing or any other means, whether in the Republic or abroad, any false or tendentious news or information intended to disturb public order or harm the prestige and credit of the country, its institutions, its high officials or the national treasury;

.....

^{1/} Freedom of Information, Vol. II p. 173

^{2/} Yearbook on Human Rights, 1949, p. 164.

SWEDEN

Constitutional Act Relating to Freedom of the Press of 23 March 1949^{1/}

Chapter 7. Offences against Freedom of the Press

Art. 4. Having due regard for the purpose of freedom of the Press as stated in chapter 1, the following utterances in print are forbidden when punishable by law:

(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;

(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;

Specific Acts and Regulations concerning Films

Act concerning Film Exhibitions of 22 June 1911^{2/}

Sec. 6, para. 2. No cinematograph picture shall be approved if its showing may appear unsuitable having regard to the relations of the realm with foreign powers, or may provide information on the strength, condition, position of movements of the army, navy or air force, or on other defence measures or arrangements where such disclosure may be harmful to the defence of the realm.

SWITZERLAND

Penal Code of 21 December 1937^{3/}

Art. 296. If a person publicly insults a foreign State in the person of its Head, its diplomatic representative or its Government, he shall be liable to imprisonment or a fine.

(Art. 297. If a person publicly insults a representative delegated by a Member State of the League of Nations to the Assembly or the Council of the League,

if a person publicly insults the Secretary-General of the League of Nations or the Director of the International Labour Office, he shall be liable to imprisonment or a fine.)

^{1/} Freedom of Information, Vol. II p. 69.

^{2/} Ibid., p. 155.

^{3/} Ibid., p. 171.

Art. 298. If a person maliciously removes, degrades or commits an act insulting the emblems of sovereignty of a foreign State, in particular its arms or its flag, publicly displayed by an official representative of that State, he shall be liable to imprisonment or a fine.

Art. 302. Proceedings in the case of the crimes and offences referred to in this part shall not be taken except by a decision of the Federal Council.

In the cases mentioned in article 296 and in the first paragraph of article 297, the Federal Council shall not order proceedings to be taken except at the request of the Government of the foreign State and provided that only reciprocity is assured. In time of active service, the Council may order proceedings to be taken even in the absence of any request by the Government of the foreign State and even if reciprocity is not assured.

Cantonal Legislation

Canton Ticino^{1/}

Constitutional provision^{2/}

The freedom of the Press is guaranteed, provided that it does not offend against good morals, the religion of the Canton or relations with friendly Powers. Abuses are punishable by law.

UNITED STATES

Joint Resolution of the United States Congress^{3/}

It shall be unlawful, within five hundred feet of an embassy, legation, or consulate in the District of Columbia to display any flag, banner, placard, or device designed or adapted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or to bring into public disrepute its political, social, or economic acts or views, or to intimidate, coerce, harass, or bring into public dispute any diplomatic or consular representatives, or to congregate within five hundred feet of any embassy, legation, or consulate and refuse to disperse after being ordered to do so by the police authorities of the District.

^{1/} Freedom of Information, Vol. II, p. 81.

^{2/} Ibid., p. 84.

^{3/} 52 Stat. 30, 22 U.S.C.A.

Case Law

Frend et al. vs. United States.^{1/} Defendants were accused of violating the Congressional resolution for having paraded in the public streets in front of the Austrian or German Embassy with a number of other persons, some of whom were carrying banners or placards inscribed with libelous language intended and calculated to bring into contempt the German Government. Defendants claimed, inter alia, that the Congressional resolution was unconstitutional because it amounted to a limitation to the right of free speech and free assembly guaranteed in the provisions of the United States Constitution.

Held: the resolution was valid and constitutional. That resolution, interpreted in the light of its purpose and according to the limitations of the Constitution, places no restriction upon speech or assembly except to the extent that they may constitute offensive public demonstration calculated to arouse passions and resentments in those governments with which we have official relations, and then only when such offensive conduct is committed upon the public streets immediately adjacent to embassies, legations, consulates, and other buildings used for official purposes by such governments. These are reasonable and proper restrictions. In them there is no abridgement of the right of the citizen. It has never been considered that the right in the public to use the streets is unlimited or that it may be exercised in defiance of the laws of the United States or the States. On the contrary, it has always been considered that a municipality may control and regulate the use of the streets in the general good; ...

The law of nations requires every government to take all reasonable precautions to prevent doing of things which would intimidate, coerce, harass, or bring into public disrepute any diplomatic or consular representative of a foreign government ... and that the responsibility of United States in protecting foreign diplomats in their embassies and legations from harassment and annoyance includes duty of protecting residence of an ambassador or minister against invasion as well as against any other act tending to disturb peace or dignity of the mission or of member of mission. ^{2/}

UNION OF SOVIET SOCIALIST REPUBLICS

Peace Defence Law - USSR Supreme Soviet, 12 March 1951^{3/}

The Supreme Soviet of the Union of Soviet Socialist Republics decrees:

- ^{1/} Frend vs. U.S., 1938, 100 F.2d 961, 69 App. D.C. 281.
- ^{2/} This case, upon Appeal to the United States Court of Appeals for the District of Columbia, was upheld, 59 S.Ct.488, 306 U.S. 640, 83 L. Ed. 1040.
- ^{3/} Soviet Monitor, No. 12,366, Tuesday, 13 March 1951; Morning Bulletin.

/1. To consider

1. To consider that war propaganda, no matter what form it may take, undermines the cause of peace, creates the threat of another war and is therefore a most grave crime against humanity.
2. To bring to court persons guilty of war propaganda and to try them as having committed a most grave criminal offence.

URUGUAY

Penal Code of 4 December 1933^{1/}

Chapter II - Offences against foreign States and their heads of Government or representatives.

Art. 138. (Attack on the life, person, liberty or honour of the Heads of foreign States or their diplomatic representatives). Any person who by direct action makes an attempt, within national territory, on the life, person, liberty or honour of the Head of a foreign State, or of its diplomatic representatives, shall be liable to four to ten years' penal servitude (penitenciaria), in the case of an attack on life, and in the other cases to two to six years' penal servitude.

If the act leads to death, the penalty shall be fifteen to thirty years' penal servitude.

Art. 139. (Desecration of foreign emblems). Any person who in a public place, or a place open or exposed to the public, within national territory, desecrates the flag or other emblem of a foreign State, shall be liable to the penalties of six months' imprisonment (prision) to three years' penal servitude (penitenciaria).

^{1/} Codigos Penales Iberoamericanos. Estudio de Legislacion comparada, by Luis Jimenez de Agua, vol. II, 1946, p. 773.

PART III

National Legislation and Jurisprudence Limiting
Freedom of Information with regard to:

"Racial, National or Religious Discrimination"

AUSTRIA

Penal Code of 27 May 1852 as amended^{1/}

Incitement to Hostility against National Groups, Religious Communities,
Corporations, etc.

Art. 302. Any person who solicits, encourages or attempts to incite other persons to hostility against a national group or attempts to incite other persons to hostility against a national group or a religious order, community or other social group, or against a legally-recognized corporation; or who generally solicits, encourages, or attempts to incite inhabitants of the State to hostility against the other; shall, unless the act is punishable with a more severe penalty, be guilty of an offence and shall be punished by detention for three to six months.

EGYPT

Penal Code of 31 July 1937.^{2/}

Chapter XIV - Crimes and offences committed through the press etc.

Art. 171. Anyone who, by words or shouts uttered in public, by means of public acts or gestures, or by means of writings, drawings, paintings, photographs, emblems or any other means of representation shown in public, or by any other means of publicity, directly provokes a person or persons to commit an act acknowledged as a crime or offence, shall be liable to punishment as an accomplice in such crime or offence, if the provocation has been followed by action.

Art. 176. Anyone who, by the above-mentioned means, incites to hatred against or contempt for one or more classes of persons shall be liable to a term of imprisonment not exceeding one year and to a fine of 20 to 100 Egyptian pounds, or to one of these penalties only, if such incitement is liable to disturb the peace.

1/ Freedom of Information, Vol. II, p. 158.

2/ Repertoire permanent de législation égyptienne, Tri., 2nd edition, June 1938.

FRANCE

Act concerning the Freedom of the Press of 29 July 1881^{1/}

Chapter IV - Section 3. Offences against Persons

Art. 32. Defamation by the same methods of a group of persons who are not specified in article 31 [Government officials] of the present Act, but who belong by origin to a given race or religion, shall be punishable by imprisonment.

Art. 33. ... If the insult is uttered with the intention of inciting to hatred among citizens or inhabitants to a group of persons who belong by origin to a given race or religion, the maximum term of imprisonment shall be 6 months and the maximum fine 500,000 francs.

If the insult is not uttered in public, it shall be punishable only by the penalty prescribed in article 471 of the Penal Code.

Art. 60. Proceedings in correctional and ordinary police tribunals shall be governed by the provisions of Book II, Part I, Chapter II, of the Code of Criminal Procedure, with the following modifications:

2. In the cases of defamation of private individuals provided for in article 32 and in the case of insult provided for in article 33, paragraph 2, proceedings shall be instituted only at the request of the defamed or insulted person.

Proceedings may, however, be initiated ex officio by the Public Prosecutor in the case of a defamation or insult uttered against a group of persons who belong by origin to a given race or religion, with the intention of inciting to hatred among citizens or inhabitants.

INDIA

Indian Press Act (Act No. XXIII of 1931)^{2/}

Control of Printing Presses and Newspapers

Power to declare Security or Press forfeited in Certain Cases

(d) to bring into hatred or contempt the Government established by law in India or the administration of justice in India or any class or section in India, or to excite disaffection towards the said Government.....

^{1/} Freedom of Information, Vol. II, p. 33.

^{2/} Ibid. p. 59.

/Penal Code, 1868,

Penal Code, 1868, as amended^{1/}

Sec. 124A. Whoever by words, either spoken or written, or by signs, or by visible representation or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with transportation for life, for any shorter term, to which a fine may be added, or with imprisonment which may extend to three years, to which a fine may be added, or with a fine.

Promoting enmity between classes

Sec. 153A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty's subjects, shall be punished with imprisonment which may extend to two years, or with fine or with both.

Deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs

Sec. 295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of His Majesty's subjects, by words, either spoken or written, or by visible representations, insults or attempts to insult the religion or the religious belief of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Sec. 505. Whoever makes, publishes or circulates any statement, rumour or reports ...
III (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community shall be punished with imprisonment which may extend to two years, or with a fine, or with both.

Exception. It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.

Code of Criminal Procedure Act, 1923, as amended^{2/}

Sec. 99A. (1) (a) Where any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or

(b) where any document, wherever printed, appears to the Provincial Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of Indian subjects or which is deliberately and maliciously intended to outrage

^{1/} Sapro, Encyclopaedia of General Acts and Codes of India, "Criminal Law & Procedure", Vol. II.

^{2/} Freedom of Information, Vol. II, p. 169.

the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under section 124A or section 153A or section 295A of the Indian Penal Code, the Provincial Government may, by notification in the official gazette stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document, to be forfeited to the Government ...

THE NETHERLANDS

Penal Code of 1886, as amended^{1/}

Chapter V - Breaches of the peace

Art. 137c. Any person who in public wilfully expresses himself in an insulting manner, either by word of mouth or in writing or in pictorial form, about a section of the population or about a group of persons belonging in part to the population shall be liable to imprisonment for a term not exceeding one year or a fine not exceeding 300 florins.

Art. 137d. Any person who disseminates, publicly exhibits or displays or holds in stock for the purpose of being disseminated or publicly exhibited or displayed a piece of writing or picture containing an insulting reference to a section of the population or concerning a group of persons belonging in part to the population shall, if he knows or has serious reason to suppose that the piece of writing or picture contains such a reference, be liable to imprisonment for a term not exceeding six months or a fine not exceeding 300 florins.

The same penalty shall be incurred by any person who with such knowledge or such reason for supposition causes the contents of such a piece of writing to be heard in public.

If the offender commits one of the offences described in this article in the course of his professional activities, and if at the time when the offence is committed less than five years have elapsed since the confirmation of a previous sentence passed upon him for one of these offences, he may be debarred from the exercise of his profession.

Art. 147. A term of imprisonment not exceeding three months or a fine not exceeding 120 florins shall be incurred by:

1. any person publicly making contemptuous and blasphemous utterances offensive to religious feelings, either by word of mouth or in writing;
2. any person ridiculing a person officiating in the conduct of a religious ceremony in the lawful performance of his functions;
3. any person deriding objects consecrated to the performance of a religious service at the place where and at the time when the performance of that service is permitted.

NEW ZEALAND

The Crimes Act, 1908.^{1/}

Art. 118. Seditious Offences defined. (1) A seditious intention is an intention:

...(d) To promote feelings of ill-will and hostility between different classes of [His Majesty's] subjects.

(2) No one shall be deemed to have a seditious intention only because he intends in good faith:

...(g) To point out, in order to their removal, matters producing or having a tendency to produce feelings of hatred and ill-will between different classes of His Majesty's subjects.

PHILIPPINES

Case Law^{2/}

"Defamatory remarks, directed at a class or group of persons in general language only, are not actionable by individuals composing the class or group unless the statements are sweeping; and it is very probable that even then no action would lie where the body is composed of so large a number of persons that common sense would tell those to whom the publication was made that there was room for persons connected with the body to pursue an upright and law-abiding course, and that it would be unreasonable and absurd to condemn all because of the actions of a part. So a newspaper article which described a Chinese society whose aim was to induce a boycott by Chinese of Japanese goods so long as the Japanese Government continued a policy deemed inimical to the integrity of the Republic of China, as having offered ten thousand pesos in a secret meeting for the life of the Chinese Consul-General, was held to be absolutely impersonal on its face, so as not to entitle the members, president, and treasurer of the society alluded to bring action against the author and publisher of the article."^{3/}

POLAND

Decree No. 334 of 5 August 1949 concerning protection of the freedom of conscience and religion. ^{4/}

Art. 7. (1) Any person who in public reviles, derides or humiliates a

^{1/} Freedom of Information, Vol. II, 1950, p. 173.

^{2/} Ibid, p. 193

^{3/} Uy Tioco et al v. Yang Shu Wen et al., 32 Phil. Rep., 624.

^{4/} Yearbook on Human Rights, 1949, p. 173.

/group of

group of persons or an individual because of their religious belief or affiliation or non-affiliation with a religious body or belief is liable to a penalty of simple imprisonment or for a term not exceeding five years.

(3) Any person who commits any other criminal act against a group of persons or an individual because of their or his affiliation or non-affiliation with a religious body or belief is liable to a penalty of imprisonment.

SWEDEN

Constitutional Act relating to Freedom of the Press of 23 March 1949^{1/}

Chapter 7. Offences against Freedom of the Press

Art. 4. 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:

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

TURKEY

Penal Code^{2/}

Art. 312. Persons who publicly extol acts which constitute an offence in law, who incite the public to breaches of the law, or who foment ill-feeling and hatred between the several classes of society in a manner likely to jeopardize public security, shall be liable to imprisonment for a term not exceeding one year and to a fine of not more than 100 pounds (Turkish).

UNITED KINGDOM

Case Law^{3/}

It is a misdemeanour to libel any sect, company or class of men, without mentioning any person in particular, provided it be alleged and proved that such libel tends to excite the hatred of the people against all belonging to such sect or class, and conduces to a breach of the peace. ^{4/}

^{1/} Freedom of Information, Vol. II, p. 69.

^{2/} Ibid, p. 181.

^{3/} All Common Law Cases cited under this heading have been taken from Halsbury's Statute of England, 2nd Ed., Vol. 5 (1949) and Odgers in Libel and Slander, 6th Ed. (1929).

^{4/} R. v. Gathersdale (1858), 2 Lewin, C.C. 237

^{4/} The defendant

The defendant published a sensational account of a cruel murder committed by certain Jews said to have lately arrived from Portugal, and then living near Broad Street. They were said to have burnt a woman and a new-born baby, because its father was a Christian. Certain Jews, who had arrived from Portugal and who then lived in Broad Street, were attacked by the mob, barbarously treated and their lives endangered. A criminal information was granted, although it was objected that it did not appear precisely who were the persons accused of the murder. 1/

It is a crime to write of a Roman Catholic nunnery that it is a "brothel of prostitution"; for this is an aspersion on the characters of the nuns in general, though none are singled out by name. 2/

A pamphlet, reflecting on the Government and asserting that its officers are corrupt, ignorant and incapable, is a libel and punishable as a crime, although no particular member of the Government and no individual officer is mentioned or referred to. 3/

UNITED STATES

Connecticut Revised Statute^{4/}

No person shall by his advertisements, ridicule, or hold up to contempt any person or class of persons on account of the creed, religion, color, denomination, nationality or race of such person or class of persons ...

Indiana Statute^{5/}

Section 10-905 B. It shall be unlawful for any person or persons acting with malice ... to advocate ... or disseminate hatred for or against a person, persons, or group of persons, individually or collectively, by reason of race, color, or religion which threatens to, tends to, or causes riot ... interference with traffic upon the streets ... or denial of civil or constitutional rights.

Illinois Statute^{6/}

It is unlawful for any person ... to manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place in this State any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity or lack of virtue of a class of citizens of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, colour, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or rights.

1/ R. v. Osborn, 2 Barnard, 138, 166.

2/ R. v. Gethse (1838), 2 Law C.C. 237.

3/ R. v. Tutchin, 14 Howell's St. Tr. 1095.

4/ Chap. 417, para. 8376 (1949)

5/ Ind. Stat. para. 10-904-914 (Burns 1933).

6/ Chap. 38, para. 471 (Hurd-Smith 1934).

Judicial Decision

Fox Film Corporation vs. Collins.^{1/} Held: under the terms of the law, as the Illinois Courts have construed it, a professor of sociology could be punished for showing literature "defamatory of racial or religious groups in his graduate seminar." The Statute is constitutionally valid. Decision of lower court is reversed.

Massachusetts Statute^{2/}

Section 98c. Anyone publishing "any false, written or printed material with the intent to maliciously promote hatred of any group of persons in the commonwealth because of race, colour or religion shall be guilty of libel

Note: The Massachusetts statute is said to be the only statute in the United States to have been passed for the purpose of controlling "the dissemination of racial and religious hatred".^{3/} It was adopted on April, 1943, upon petition of the American Jewish Congress, "at a time when hate literature was rife throughout the United States, and race riots and the desecration of religious property in the Boston area were causing considerable concern".^{4/} There appears to be no record of any successful prosecution under this statute.

Nevada Statute^{5/}

Section 10110. A libel is a malicious defamation, ... tending ... to impeach ... the reputation ... of a living person, or persons, or community of persons, or association of persons

New Jersey Statute (Rafferty Act or "Anti-Nazi Law")^{6/}

Any person who shall, in the presence of two or more persons, in any language, make or utter any speech, statement or declaration, which in any way incites, counsels, promotes, or advocates hatred, abuse, violence or hostility against any group or groups of persons residing or being in this state by reason of race, colour, religion, or manner of worship, shall be guilty of a misdemeanor.

Judicial Decision

State vs. Klapprott.^{7/} Held: the New Jersey statute is unconstitutional. It is so vague and indefinite as to leave unsettled in the minds of citizens precisely what conduct was illegal. The terms "hatred", "abuse", "hostility", are abstract and indefinite ... as to jeopardize constitutional rights. Fathers instructing their children in a neighbour's religion and teachers of philosophy in the schools could be caught in its web.

^{1/} 236 Ill. App. 281 (1925)

^{2/} Mass. Laws, chap. 272 (1943)

^{3/} Tanenhaus, "Group Libel" Cornell Law Quarterly, Winter, 1950, vol. 35, no. 2, p. 286.

^{4/} Ibid.

^{5/} Nev. Laws (1929) ctd. Tanenhaus, "Group Libel", Cornell Law Quarterly, vol. 35, 1950, p. 286-7.

^{6/} N.J. Statute Ann. tit. 2, chap. 157 B.

^{7/} 127, N.J. L. 395, 22 A 24 877 (1941).