

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON FREEDOM OF INFORMATION AND OF THE PRESS

MEMORANDUM ON THE CONCEPT OF FREEDOM OF INFORMATION TO THE
MEMBERS OF THE SUB-COMMISSION FROM THE CHAIRMAN,
DR. G.J. VAN HEUVEN GOEDHART

I

The main task of the Second Session of the Sub-Commission on Freedom of Information and of the Press, as laid down by the Economic and Social Council, will be an examination of what rights, obligations and practices should be included in the concept of freedom of information. The allocation of this task clearly links the work of the Sub-Commission to that of the Commission on Human Rights, which is at present engaged in drafting an International Declaration and Covenant on Human Rights. The relationship between the two bodies is further emphasized by the fact that the Commission has asked the Sub-Commission for its views on the suggested articles on freedom of information in the Declaration and Covenant (document E/CN.4/Sub.1/36). Although the Declaration and Covenant may again be redrafted before they are finally considered by the General Assembly (at the moment, for example, they are being studied by the Member States) we may assume that when these most important documents have been accepted by the Assembly, the Member States may proceed to bring their constitutions into line with the contents. We are arriving at the stage when international law must prevail over national law.

II

It is impossible to state briefly, and in a form which would be suitable for the Declaration and Covenant on Human Rights, the "rights, obligations and practices which must be included in the concept of freedom of information." While, on the one hand, the Sub-Commission must facilitate, as far as possible, the task of the Commission on Human Rights in drafting the articles on freedom of information, it is also bound by the terms of reference decided upon by the Economic and Social Council. Accordingly, as will be seen from the agenda for the Second Session of the Sub-Commission (document E/CN.4/Sub.1/35/Rev.1), we now have two main tasks:

/(a) Consideration,

(a) Consideration, pursuant to a resolution of the Second Session of the Commission on Human Rights (document E/600), of articles concerning freedom of information for inclusion in a Draft Declaration on Human Rights and a Draft Covenant on Human Rights; and

(b) Examination of the rights, obligations and practices which should be included in the concept of freedom of information.

It is probable that freedom of information is not the only sphere in which the difficulty will arise of defining a concept in one or two short articles as well as elaborating the elements implicit or explicit in the definition. It is to be expected that this difficulty will arise in the case of most definitions of human rights. It may well be, therefore, that finally, besides the Declaration and Covenant there will be one or more official documents elaborating and interpreting them. However, that is a problem for the Commission on Human Rights to solve.

In the event the Sub-Commission came to the conclusion that it is impossible to provide, in one or two articles, a definition of the concept as well as an elaboration of the elements, it will, of course, inform the Commission of this decision and the reasons for arriving at it.

III

The following text was suggested by a small Netherlands Commission for an article on freedom of expression in a Bill of Human Rights:

"Everyone has the right to reveal thoughts and feelings, but is responsible under national law for abuse of this right. National law includes among the abuses of this right the intention of violating the right itself, or the other human rights mentioned in this Statute, or of undermining respect for these rights.

"Criticism of the law protecting this right is not an abuse of the right.

"No legal regulation may abridge the liberty of the citizen to receive information of any kind."

The Sub-Commission might wish in the first place to consider this text as a basis for discussion. Numerous variations of the above text may also be considered. However, it should be pointed out:

- (a) That this text applies to all known media of mass communication as well as to any which may be devised in the future;
- (b) That in the first paragraph the text links right with obligation insisting that while a right exists, there is legal responsibility for the way in which it is used;

/(c) That the

(c) That the fact that the law must regulate abuse of this right has the effect of preventing executive power from taking steps based on an arbitrary interpretation of what constitutes abuse;

(d) That the elaboration of the idea of abuse in the second paragraph constitutes an attempt to overcome the problem of the necessity of limiting freedom in order to prevent freedom from being abused, human rights from being violated and respect for human rights undermined.

(At the First Session of the Sub-Commission there were lengthy discussions as to whether the freedom of speaking one's mind must be regulated in a positive sense for the purpose of carrying on the struggle against fascism and war-mongers. The majority of members of the Sub-Commission were of the opinion that the terms "fascism" and "war-mongering" were not sufficiently defined.) If, however, every attempt by the media of information to violate or undermine respect for human rights is described as an abuse of freedom of information, there can be no doubt that such a definition would also include those publications which could be described as "fascist" or "war-mongering." It would be necessary to establish beyond reason of doubt that such publications constituted actual encroachments on or violations of the respect for specific human rights. This method of approach has the great advantage of preventing actions against persons, groups, newspapers, radio corporations or newsreel concerns on vague and general accusations of "fascism" or "war-mongering" by the simple expedient of requiring adequate cause for action in every case;

(e) That freedom to fight an abuse of the right to publish thoughts and feelings is expressly guaranteed in paragraph 3 of the text by assertion of the principle that such criticism cannot be considered an abuse of the right;

(f) That paragraph 4 guarantees the right to receive information. In my opinion it is inadvisable to grant an absolute right in this respect. Such right would preclude a church or a voluntary society from dissuading or forbidding its adherents or members from receiving information which might tend to subvert them. It seems to me that within the United Nations one cannot go beyond demanding that a State, as such, must not abridge the right of citizens to receive information (e.g. the State may not forbid or prohibit people from listening to broadcasts). Naturally, the State cannot be denied the right to promulgate such measures in time of war.

/IV Having arrived

IV

Having arrived at agreement regarding this or a similar text, the Sub-Commission should recognize the fact that however accurately the limits of regulations concerning abuse are described, national legislation and regulation nevertheless can at all times, and to a high degree, abridge the right to free information. This cannot be avoided. Moreover, the degree to which freedom exists depends finally upon the nature of political regimes. Efforts can be made by means of international treaties, or by conventions setting up international machinery to bring about some unification of and agreement on the right to freedom of information (as of any other right) and to check any tendency to abridge that right. In considering this the Sub-Commission will have to bear in mind that ideal conditions cannot be brought about in a day. Here, as in any branch of international law, a step-by-step procedure must be evolved. While the temptation may exist to draft an extensive list of "rights, obligations and practices", there is a corresponding risk of attaining nothing because an attempt has been made to attain too much. It is my opinion that at this stage the Sub-Commission should do no more than suggest minimum definitions. In other words, it should enumerate the "rights, obligations and practices" which in its opinion should be accepted if there is to be freedom of information in the meaning and sense of the articles on freedom of information which the Sub-Commission will submit for the Declaration and Covenant on Human Rights. The following is a suggested elaboration, in which, it is pointed out, not more than minimum definitions are considered.

A. "Rights"

1. Freedom of information implies that the citizen is not obliged to subject his thoughts, feelings or opinions before publication, by whatever technical means, to government judgment and supervision. (No censorship)
2. Freedom of information implies that the citizen may not be held legally responsible for publication of thoughts, feelings or opinions, on grounds other than violation of legal regulations (no "repressive censorship").
3. With regard to journalists working in their own country, freedom of information implies freedom of movement, freedom of access to the sources of news, and the right to secrecy regarding the sources of their news, (this implies the right of the journalist to abstain from revealing the source of his information).
4. With regard to alien news personnel, freedom of information implies that they have been informed regarding the practice and procedure of censorship, if any, and that they are immediately notified if their despatches have been censored, and if so to what degree.

/B. "Obligations"

B. "Obligations"

1. Freedom of information implies ipso facto the duty of every citizen to permit his fellow citizens to enjoy that right, and not to obstruct them in its enjoyment.
2. Freedom of information demands from the citizen not only that he abstain from legally prohibited violations, but that, in the use of that right, he act positively and with due respect to the views of other people.
3. The journalist working in his own country should, in the enjoyment of this freedom, pattern his behaviour according to standards of professional conduct laid down either by law or accepted and operative among his colleagues.
4. Alien news personnel are obliged, in the fulfilment of their task, to remember that they are enjoying the hospitality of a foreign country, and accordingly give to the outside world a faithful and objective picture of that country.

C. "Practices"

1. Freedom of information implies safeguards against monopolization of the media of information. Monopoly can only be brought to light by publicity, and it is desirable that publicity be provided for by law.
2. Freedom of information implies that the technical means for the dissemination and reception of information should be widely available and at low cost. Legal measures to promote this availability, and international action which would make provision for it, are most desirable.
3. It might be recommended that some international authority prepare yearly reports on freedom of information in each country, with a view to assessing the condition of this freedom and arriving at universal standards.
4. It is desirable to create an international authority of permanent character, to adjudicate differences between countries arising out of reports transmitted by foreign news personnel. Each state party to such a difference would first refer it to its national professional union (of journalists, newsreel photographers, broadcasters, etc.). The dispute, together with the opinions of the national professional organizations, would then be referred to the international authority, which would not make a decision until it had heard the professional organization or organizations, if any. This procedure would assist in promoting national as well as international professional standards.

V

It would not be difficult to add to the list of "rights, obligations and practices" mentioned above. This memorandum has aimed at being no more than a stimulus and a basis for discussion. If it contributes in some degree to arriving at a practical basis of procedure for the second session of the Sub-Commission, the author's object will have been fully attained.
