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DRAFT CONVENTION ON FREEDOM OF INFORMATION

COMMENTS BY GOVERNMENTS

Report by the Secretary-General

The Secretary-General has the honour to inform the General Assembly that, pursuant to its resolution 1313 C (XIII), the Governments of Indonesia and Thailand have submitted comments on the draft Convention on Freedom of Information, which are reproduced below. Both Governments have also forwarded statements of the legal provisions relating to freedom of information in their respective countries.

INDONESIA

[Original: English]

"1. The Draft Convention on Freedom of Information is based on the Charter of the United Nations and the Universal Declaration of Human Rights, both of which are upheld by the Indonesian State.

"2. Neither the preamble nor the articles of the Draft Convention are contradictory to the Indonesian Constitution and legal statutes, and the spirit of the Draft is in conformity with Indonesia's draft Press Law.

"3. Freedom of Information may be restricted in the cases included in Article 2, paragraphs (a)-(i) and Article 11, paragraph (a) of the Draft Convention. Such restrictions are in conformity with the Indonesian Penal Code, Articles 14 and 15 of Law No. 1 of 1946, and Law No. 74 of 1957.

"4. It is of particular concern to Indonesia that the independence movements in various non-self-governing, trust and colonial territories be permitted to find

their free expression through media of information. Because of the fact that 'freedom of expression' and 'the free interchange of information and opinions' are recognized by the Draft Convention as 'fundamental human rights' (see preamble), the Indonesian Government is of the opinion that the freedoms and other provisions embodied in Article 1 and Article 16 of the Draft Convention must be interpreted in such a way as to be applicable to the peoples in non-self-governing, trust and colonial territories. In this connection, we would like to make the following comments on specific articles:

"a. Article 1, paragraph (a):

"The guarantee for the provision of freedom of information to 'own nationals' and 'nationals of other Contracting States' is acceptable upon the following condition: the term 'own nationals' must be interpreted by the administering authorities of non-self-governing, trust or other colonial territories in such a way as to include:

- (i) Citizens of the State of the administering or colonial authority;
- (ii) Indigenous inhabitants of the non-self-governing, trust or colonial territory.

"b. Article 1, paragraph (b):

"The prohibition against discrimination is acceptable if the term 'own nationals' is interpreted as explained above in paragraph a.

"c. Article 16:

"This article does not provide a satisfactory guarantee for the implementation of provisions of the Convention in regard to indigenous peoples of non-self-governing, trust or other colonial territories. Moreover, no other article in the Draft Convention contains such a guarantee.

"5. The aims included in Article 5 of the Draft Convention are in conformity with the policy implemented by the Indonesian Government and the article itself is acceptable with the following reservation:

"Because the radio still constitutes an essential medium of information in Indonesia, radio stations which broadcast to the public must remain under the supervision of the Indonesian Government for the present. The time is not yet appropriate for radio stations to be commercialized by non-official organizations of persons employed in the dissemination of information and opinions to the public.

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"Thus it is the opinion of the Government of Indonesia that the Draft Convention on Freedom of Information prepared by the Ad Hoc Committee in general is satisfactory. The Draft is based on the Charter of the United Nations and the Universal Declaration of Human Rights, both of which are upheld by the Republic of Indonesia, and neither the preamble nor the articles of the Draft are contradictory to the Indonesian Constitution and legal statutes. Therefore, the Government of Indonesia, in conformity with its attitude in previous years, with due consideration for the above-mentioned reservations, can agree that the Draft be adopted as a convention as soon as possible."

THAILAND

/Original: English/

"An initial remark must be that the Draft does not even try to give a definition of the word 'information', subject matter of the Convention. That Draft seems to believe that the word 'information' is clear by itself. In our opinion this is a serious mistake. Must it be understood that the word 'information' is taken in its narrowest sense, namely periodical (daily or otherwise) knowledge of news and events happening, or in a wider sense of the word does information extend to books, pamphlets, images, etc. concerning a certain matter for the enlightenment of the readers: for instance, suppose that in a country the publication or importation of the Hebraic Bible is prohibited, this is a suppression of information for the people desirous to know the principles of that doctrine; on the other part, supposing a State where the publication of the original works of Karl Marx is prohibited, this is also to suppress information which may be requested by students or economists in order to study and comment the doctrine. The books cited in those instances (specially when they are the text itself without comments) are essentially means of information. The question is not irrelevant especially when one sees in the documents communicated the constant preoccupation of the Draft to take in its special consideration the 'under-developed' races, for which information of ancient facts are as essential as information of present facts.

"It is not clear in the Draft if that discrimination has been taken into consideration or not, as it should be. A definition of the word is not proposed

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here (but perhaps the present information could be called 'periodical informations') because this depends on the policy of the Convention, for restricted meaning or wide meaning. Up to now the mention of the Report of the Third Committee of the UNO when it reconsiders a 'free flow of news and information' (page 5) as well as article 1(a) of the Draft do not clarify the question. In the Dictionary of Oxford, 'the action of informing', is 'to impart knowledge of some particular fact or occasion to a person'.

"Another general remark raised by that Draft on 'Freedom of Information' is important. It is obvious that article 19 of the Universal Declaration of Human Rights is not limited to that 'right of information' alone, since it mentions also freedom of opinion and expression. 'Information' in article 19 appears merely as included in the superior right of opinion and expression. It is in order to permit that right that to receive information is considered by article 19. But the name of the International Convention which is under our examination is 'Freedom of Information', that is to say freedom of a right which is only an element of the right of opinion and expression.

"When the Convention is called 'Freedom of Information', the reader cannot fail to be surprised to find the word 'Freedom of information and opinion' in the preamble paragraph two, article 5, article 7 (b and c). The unexpected introduction of the word 'opinions' in the matter of Freedom of Information is probably explained by reference to article 19 of the Universal Declaration of Human Rights. But this justification is far from being satisfactory. Opinion is not information; between the two things there is as much difference as between facts and comments. Facts impose themselves, whilst comments are a matter of preference and discussion which may be endless and may cause troubles. It should be necessary to know exactly which is the intended subject of the Convention, and that is why a definition seems so much necessary. Perhaps the word 'opinion' in the texts of the Draft means only to report as information private opinions such as are quotation from some newspapers or magazines or even from some well known political or learned men? This should be acceptable as a legitimate part of 'information'. But the uncertainty shows clearly why a definition is requested.

"Article 2. - When it is said in this article that the exercise of the Freedom of Information entails duties and responsibilities, this needs some re-examination.

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In an International Convention, it is the signatory State alone which has duties and responsibilities. When the acts enumerated by the article are committed, they may constitute facts imputable to persons or bodies who then shall be responsible under the penal laws or eventually the civil law (wrongful act). It seems unquestionable that the policy of article 2 coming after the principle of freedom of information, is that; however, freedom of information may be restricted, suspended or even abolished either permanently or temporarily, in the following cases: a, b, c, d, e, f, g, h...'. Incidentally cases (the prevention of fraud) should have better to be more explanatory because an intention of fraud in matter of information is rather difficult to realize or to ascertain.

"Article 4. - The 'right of reply' dealt with in the article is such a natural consequence of the freedom to write and print that it exists already in almost all countries without legislative provisions. The interesting idea should be to propose that 'no provision of law shall forbid the natural exercise of the right of reply or similar corrective remedy. But provisions may be enacted in order to control and make it reasonable in the interest of the two parties.'

"Article 5. - The recommendation to establish in the contracting States 'non-official organizations of persons employed in the dissemination of information and opinion to the public' may be very dangerous in some countries (specially under-developed). The explanations given as to the observation of professional standards and moral obligations devoid of prejudice or malicious intent are rather weak and suppose that mankind is much nearer to perfection than it is in fact. When unfortunately a mention of 'opinion' is put together with these surprising non-official organizations, it may be feared that the application would result in pressure and one-sided propaganda.

"The end of the Article 5 (a, b, c, d, e) contains very good suggestions for the study and respect of Human Rights so that it is felt that they ought to be separated from the utopics 'encouragements' which are not within the spirit of the Convention. By separation it is meant that a special article should be reserved to the numbers a, b, c, d, e in the following form:

"Article 5 bis. - Each Contracting State shall take it as a point of general policy in matter of Information that the freedom established by this Convention has far fundamental purposes: a, b, c, d, e.

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"Article 7. - It is supposed that there is a misprint in line 10, because it is understood that the 'provided' applies to a, b, c, not to c only, and should come in another line.

"Article 9. - It is felt that this provision should have better to come as a final paragraph of Article 2 redrafted as it is proposed hereabove."
