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FREEDOM OF INFORMATION

Views and suggestions of Governments concerning the
draft Convention on Freedom of Information

Report by the Secretary-General

The Secretary-General has the honour to inform the General Assembly that pursuant to its resolution 1189 A (XII) an additional reply concerning the draft Convention on Freedom of Information has been received as follows:

GUATEMALA

Article 1: Guatemala was a signatory of the Convention on Territorial Asylum, signed at Caracas, Venezuela, on 28 March 1954, and consequently is obliged to comply with the provisions of article VII of that Convention, which reads as follows:

"Article VII. Freedom of expression of thought as accorded to all the inhabitants of a State by the laws of that State may not be the ground for a claim by another State in respect of opinions expressed publicly against that State or its Government by persons who have sought asylum or refuge in the first-mentioned State unless such opinions constitute systematic propaganda representing an incitement to force or violence against the Government of the claimant State."

Although this Convention has not yet been approved by the Congress of the Republic, the measures necessary for that purpose are being taken. As a result, the Convention on Territorial Asylum will come into force for Guatemala before the Convention on Freedom of Information is signed.

Article 2: The Guatemalan Act respecting the Expression of Thought places limitations on freedom of information and expression, but these do not go beyond the general principles set out in draft article 2. In this respect it may be noted that both the Constitution of the Republic and the above-mentioned Act provide that:

"Attacks against public officials or employees for purely official acts in the performance of their duties shall not constitute libel or defamation. Anyone believing himself injured shall be entitled to have his defence and rectifications published".

Article 3: The wording is not very clear. The following might be adopted instead:

"Article 3. Provisions of this Convention which might be interpreted as limitative shall not modify such laws already in force in the signatory countries as guarantee the rights and freedoms referred to in article 1, nor shall they be interpreted as limitative of such freedoms and rights".

Article 4: The Guatemalan Act respecting the Expression of Thought prescribes, in articles 37 to 47, the form and conditions for making use of the right of clarification and rectification. There is thus a legal guarantee that a person accused or mentioned by a publication can publicly defend himself.

Article 7: The same reservation must be made regarding sub-paragraph (c) of this article as for draft article 1.

Article 12: Article 149, sub-paragraph (b), item 3, of the Constitution of the Republic provides that no question may be submitted for decision by an international court or for international arbitration without the approval of a two-thirds majority of the Congress of the Republic.

Article 16: The Government of Guatemala, as it has done in all international conventions, protocols and agreements which may in any way affect the territory of Belize, makes an express reservation to the effect that Belize is not a possession of the United Kingdom, but a territory which legitimately belongs to the Republic of Guatemala.

These brief comments on certain articles of the draft convention have been made in order to show that the situation prevailing under Guatemalan law is favourable to the signing of a Convention on Freedom of Information.

In compliance with the request contained in item (b) of the communication from the Secretary-General of the United Nations, No. SO 22/9/(3-1), dated 13 February 1958, the legal provisions in force in Guatemala relating to freedom of information are stated in the comments on articles 1, 4, 12 and 16 of the draft Convention.
