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Chairman: Mr. Eduard MEZINCESCU (Romania).

AGENDA ITEM 35

**Draft Convention on Freedom of Information (A/AC.42/7 and
Corr.1, annex; A/3868 and Add.1-8, A/4173 and Corr.1 and
Add.1-3, A/4401, A/C.3/L.878-881, A/C.3/L.883-884)
(continued)**

ARTICLE 2 (continued)

1. Begum Aziz AHMED (Pakistan) said that her delegation, which had been on the Committee of fifteen members appointed by the General Assembly at its fifth session (see resolution 426 (V)) to prepare a draft Convention on Freedom of Information, was well aware of the view that the United Nations should not adopt a convention which might include limitations on freedom of information. It was not convinced of the logic of that view, however. At the present time States had complete liberty to place whatever restrictions they chose on the freedom to gather, receive and impart information, and consequently no matter how many restrictions were permitted in article 2 of the draft Convention (A/AC.42/7 and Corr.1, annex), the sum total of possible restrictions could only be reduced thereby.

2. While some delegations might feel that freedom of information would not be adequately promoted by a convention containing all the restrictions listed in article 2, it could not be argued that it would not be promoted at all. As the Indian representative had pointed out (1032nd meeting), in any international convention of that kind the aim should be to raise minimum standards and not to impose maximum standards upon all. The draft Convention would promote freedom of information in countries where it was less developed, while countries with a longer tradition in such matters were adequately safeguarded under article 3. She recalled an agreement recently concluded between Pakistan and India whereby, in order to promote harmony and improve mutual relations, the two countries agreed to no fewer than twelve limitations on the information disseminated in one country about the other.

3. It was unfortunately the under-developed countries of Africa and Asia which had borne the brunt of abuses of freedom of information. "Local colour" might help to make a newspaper article readable, but

reports containing nothing else could hardly give outsiders a true picture of living conditions in the area. In the advanced countries, sensationalism had produced highly adverse effects and tended to give the public a very false impression of life in the foreign country described.

4. Absolute freedom was impossible in an organized society. Certain restrictions on all freedoms, including freedom of information, were justifiable. She believed, more particularly, that the two new subparagraphs proposed in the five-Power working paper (A/C.3/L.880) were acceptable. She did not think, however, that the prohibition of expressions inciting to religious hatred as proposed in subparagraph (d) of the five-Power text, was sufficiently specific. States should also be permitted to ban expressions against the personality and character of the founders of religions, such expressions being much more offensive to persons professing a religion than a criticism of the religion itself. Her delegation therefore proposed an additional limitation in article 2, which would read "Expressions about founders of religions which injure the sentiments of the followers of those religions" (A/C.3/L.883).

5. While she well understood opposition to lengthening the list of limitations, she commended her amendment to the Committee's serious attention as it was intended to protect the profound susceptibilities of millions of people, certainly in her own country and no doubt in many other countries as well.

6. Mrs. THOMSEN (Denmark) wished to state at the outset that even if her objections to certain details in the present draft were met, her delegation would not be in a position to vote in favour of article 2. It was opposed to the very idea that freedom of information should at present, or at any foreseeable time in the future, be regulated by an international convention.

7. Her delegation had three main juridical objections to article 2. First, the article contained no clause prohibiting advance censorship. That meant that if it was adopted as it stood, there would be nothing to prevent a State from introducing censorship by law on one of the grounds enumerated in the article. Nor was there any clause which would prevent States from resorting to those more subtle means of guiding and controlling information media which today had replaced the older, more primitive and perhaps less efficient forms of censorship. Secondly, the article evaded the fundamental question: who was to decide whether information or opinions published or about to be published were unlawful on the grounds provided in the article. It was certainly important whether the power to make such decisions rested with governmental authorities or with independent courts of justice, and whether those decisions were made before publication or after. While it might be said that anyone unlawfully deprived of his freedom in such matters could take

his case to court, the information in question would normally have lost its interest before the decision of the court was announced, and the State might thereby have attained its purpose without actually subjecting itself to the control of the courts. Thirdly, the limitations stated in the article were extended to a new field not previously covered by the traditional constitutional guarantees of freedom of expression—that of gathering and receiving information. That was a matter which could only to a very limited extent be regulated by law, and certainly not by an international convention.

8. Many delegations had emphasized their desire to protect their countries from misleading information and unwarranted attacks in the foreign Press. But those were not the consequence of freedom of the Press. Some of the worst examples of erroneous information about other countries and of malicious attacks on their social and political systems originated in countries which had no free Press or radio and whose information media were controlled by the Government. Nothing in article 2, and nothing in the amendments proposed, would make it possible to eliminate that evil.

9. The Indian delegation had expressed the view that article 2 should be more clear-cut so as to leave no doubt regarding its interpretation. But she could not see that the working paper submitted by the Indian delegation and others (A/C.3/L.880) offered any clue to the article's interpretation. The main question—who was to decide what constituted a violation of freedom of information—remained unanswered.

10. The Saudi Arabian representative had stressed the possibility that newspaper correspondents from countries which did not accede to the draft Convention might be subjected to greater restrictions in States parties to the Convention than correspondents from countries which had acceded to it. She did not think that situation would actually arise, but even if it did that would not in any way alter her delegation's position on the draft Convention. In any case, countries such as hers meant to go on being islands of freedom in a world in which far too many countries had apparently not yet learnt the value of freedom of information for the maintenance of a reasonably free society. She assured the Saudi Arabian representative that no restrictions placed on foreign correspondents in countries which had acceded to the Convention would be reciprocated in her part of the world.

11. She understood and appreciated the Philippine attempt (A/C.3/L.878) to replace the detailed enumeration in the original draft by a more general formula. For the reasons she had already stated, however, her delegation could not support the suggestion if it were submitted to the Committee as a formal amendment.

12. She entirely agreed with the lucid arguments advanced by the Argentine and Uruguayan representatives, but she was unable to support any attempt to write a prohibition of advance censorship into article 2. The term "censorship", or any possible substitute for it, could not possibly offer any guarantee against all the possible forms of State control of information media.

13. Her delegation, representing a country which had enjoyed freedom of information for more than a century, understood why the United Nations had undertaken to expand and secure that freedom for all the peoples of the world. It had become convinced

in the course of the discussions, however, that today the purpose of the draft Convention would, in the eyes of far too many countries, be to justify the curbing of that freedom. Consequently, her delegation would prefer to postpone further work on such a convention until there was a greater and more sincere will among nations to secure real freedom of information, rather than affix the seal of the United Nations to restrictions on that fundamental freedom.

14. Mr. WAHLUND (Sweden) fully endorsed the remarks of the Danish representative. His delegation had stated its views on the draft Convention as a whole at the fourteenth session (973rd and 977th meetings) and its position was unchanged. The Swedish Constitution had provided for freedom of information for more than 200 years and Sweden was among those countries where that freedom had reached the highest possible degree of development. Its Press was completely free from State control, and all the political parties were represented by newspapers. Swedes regarded the Press as the watchdog of their democratic Government, and the same was true of other mass media of information.

15. It might be thought that since a high degree of freedom of information existed in most countries it would be easy to reach agreement upon a convention. That was not so. First, everyone was proud of freedom of information in his own country and often unwilling to accept that freedom as exercised in another country. More important, however, was the fact that different countries had different opinions on what was meant by freedom of information. It was open to an arbitrary judgement to decide what kind of information was entitled to the protection of the Convention. The words "free interchange of accurate, objective and comprehensive information" in the preamble^{1/} were open to different interpretations. Who was to decide what was meant by "accurate" and "objective"? If it was Governments, there was an obvious danger that they would tend to permit only such information as they deemed suitable, replacing freedom of information by control of information. That being so, his delegation had the gravest misgivings regarding article 2. It believed that the draft Convention failed to secure an increase in freedom of information, and it was for the time being satisfied with the provisions of article 19 of the Universal Declaration of Human Rights.

16. The people of Sweden did not believe in "freedom of information" which was controlled by a Government in any way. It believed in genuine freedom of information which permitted free competition between untruth and truth and which was the best way to ensure that the truth prevailed.

17. For all those reasons he found the draft Convention as a whole unacceptable and would vote against article 2.

18. Mr. BAROODY (Saudi Arabia) observed that it would be very difficult for the Committee to make any real progress towards a generally acceptable text of article 2 so long as it continued to be confronted with a large number of alternative suggestions.

19. He himself had suggested a text (A/C.3/L.881) which was designed to ensure that the optional limitations in article 2 would not be arbitrarily invoked

^{1/} See Official Records of the General Assembly, Fourteenth Session, Annexes, agenda item 35, document A/4341, annex.

by Governments, in the hope that it would allay the fears expressed by a number of delegations. He would, however, point out to them that there was no such thing as complete freedom; the law was always coercive, but it was necessary for the regulation of society. He appealed to those delegations whose point of view was different from his own to recognize how greatly many countries felt the need for a convention on freedom of information. He hoped they would be satisfied if article 2 not only laid down limitations to ensure that freedom of information did not give place to licence, but also ensured that those limitations could not be abused by arbitrary governmental action.

20. He now wished to make the further suggestion which appeared in document A/C.3/L.884. He ventured to hope that the insertion of the clause he proposed in the second sentence of the Philippine text (A/C.3/L.878) would be found to bridge the gap between that text and the five-Power working paper (A/C.3/L.880).

21. He assured the Danish representative that the remarks which he had made at the 1032nd meeting regarding the position of countries which did not ratify the Convention had not been intended as a threat. He did feel, however, that if some countries which ratified the Convention should at some future date decide to impose restrictions on correspondents from countries which had not done so, the free flow of information would be impeded.

22. In conclusion, he urged all the representatives who had put forward suggestions concerning the text of article 2 to consult together in an effort to achieve an agreed wording.

23. Mrs. LEFLEROVA (Czechoslovakia) said that the purpose of article 2 should be to create conditions for the dissemination of truthful and undistorted information and that consequently the article must lay down the principle that the enjoyment of the freedoms embodied in article 1 involved duties and responsibilities.

24. Her delegation basically supported the article in its original formulation, which was consistent with the constitutional provisions in her country, from which it followed that the sole ground for restricting freedom of information was the interests of society. Absolute freedom of information—as exercised by an individual or group of individuals—could act against the interests of other individuals or groups or the entire nation; hence the need for reasonable limitations. The world was unfortunately still confronted with instances of irresponsibility by information media. Many representatives had cited examples to that effect, and she could add many more from her own country's experience. It was therefore particularly important for the Committee to remember that its purpose was to draw up an international instrument to regulate freedom of information, having due regard to the interests of all States and to the purposes of the United Nations as stated in its Charter.

25. She recalled that the General Assembly had recently adopted a resolution urging that immediate and constructive steps should be adopted in regard to the urgent problems concerning the peace of the world and the advancement of its peoples (resolution 1495 (XV)). Her delegation believed that further work on the draft Convention, in a spirit of co-operation and mutual understanding, would constitute one such

constructive step. Of course, the draft Convention must, in that process, be viewed in the light of the actual situation existing in the world and account must be taken of the importance of information media and their immense effect on public opinion. Hence, the Convention should state very precisely that freedom of information must not be abused to disseminate war propaganda or to carry on any activity directed against the peace or against national or racial groups. Her delegation therefore welcomed the Cuban amendment (A/C.3/L.879).

26. The Philippine working paper (A/C.3/L.878) entirely disregarded that issue. The Philippine representative had stated that the subject was covered in article 5 of the draft Convention, but that article referred only to the obligations of each Contracting State in connexion with "the establishment and functioning within its territory of one or more non-official organizations" and not with its general obligations to curb information activities directed against international peace and security, or the dissemination of false or distorted reports, etc. Accordingly, if the Philippine draft was submitted as a formal amendment, her delegation would be unable to support it.

27. She considered the five-Power working paper (A/C.3/L.880) a good basis for drafting a generally acceptable version of article 2. Her delegation was, in conclusion, prepared to accept any amendment which would strengthen the text of the article as it now stood.

28. Mrs. MANTZOULINOS (Greece) said that in the general debate on the draft Convention during the fourteenth session her delegation had stated (971st and 979th meetings) that it favoured certain limitations on freedom of information provided they were in accordance with the law and necessary to protect public morals, the dignity of the human person, national security and public order. Its attitude had been based on the Greek Constitution, under which everyone was entitled to express his thoughts in speech, writing and print, provided that he kept the laws of the State. The Press was free and censorship and other measures to prevent the exercise of the freedom were prohibited. In that context, she wished to associate herself with the suggestions made by the representatives of Argentina and Uruguay (1032nd meeting) for the inclusion in article 2 of a paragraph to the effect that the existence of the limitations therein set forth should not be deemed to justify the imposition of prior censorship in any form. Such a clause would maintain the principle that there should be no prior interference by Governments with freedom of information.

29. She was well aware of the divergence of views in the Committee as regards both the limitations and the draft Convention as a whole but, after listening to the arguments advanced by both sides and the accounts of the early history of the draft Convention, she was convinced that what the Committee had to do was to work on the text before it in order to find a wording acceptable to all or at least most of its members. That involved clarifying the meaning and scope of the limitations clause and deciding on the form it should take.

30. She fully agreed with the point made by the representative of Argentina at the 1032nd meeting that the responsibilities referred to in the first sentence of article 2 were not incurred until the freedom in question had been abused. In her opinion, that sentence

clearly meant, in relation to the term "duties", that it was only by exercising those freedoms in violation of the law that an individual, duty-bound to respect that law, laid himself open to its sanctions. The provision was in complete accord with the Greek Constitution.

31. As regards the form which the limitations should take, she believed that no attempt should be made to enumerate them. According to article 2, limitations could be prescribed by law. That clearly meant the domestic law of signatory States, which varied from one State to another according to the different political, economic and social standards of each. The text of the Convention could therefore lay down only general principles to guide individual States in drawing up their domestic laws.

32. Although the Greek Government had already expressed its views on the enumerations in article 2 (A/4173), she thought the suggestion made by the Philippine representative (A/C.3/L.878) was useful and she might comment on it and other suggestions once they were crystallized.

33. Mr. MAQUIEIRA (Chile) observed that the basic problem in connexion with article 2 was whether it was preferable to draft a short general text or to provide a detailed enumeration of limitations on freedom of information. Bearing in mind that the purpose of the draft Convention was to strengthen freedom of information and not to restrict it, the logical conclusion was that article 2 should be condensed. There was the further point that even a long list of limitations could never be exhaustive.

34. All countries, even those which enjoyed the fullest freedom of information, as did Chile, had legal provisions limiting that freedom in certain specific cases. It would therefore be sufficient to refer in article 2 to those limitations which were most essential for the achievement of the purpose of the article, defining them in such a way that they could be applied by the courts of each country. Such restrictions provided a logical safeguard for the exercise of freedom of information without harming either the State or the individual. If, on the other hand, greater emphasis was placed on the limitations than on freedom of information, the purpose of the draft Convention would be defeated.

35. While he felt that it was too early to take a position on the various working papers before the Committee, he agreed in general with the arguments put forward by the Philippine representative, whose working paper should prove useful. The suggestions made, *inter alia*, by the Argentine and Uruguayan representatives regarding the inclusion of a clause providing that the limitations on freedom of information should not involve prior censorship in any form would strengthen the text and prevent any abuse in the imposition of the prescribed limitations.

36. Article 2 had to be considered in relation to the text of article 1 in the form in which it had been finally adopted.^{2/} That article no longer contained the fundamental principle of the right to seek information, the word "seek" having been replaced by the word "gather". It was therefore essential not to exaggerate the limitations in article 2.

37. Mr. COX (Peru) recalled that at the previous session, his delegation had introduced an amendment, which had been adopted by the Committee (979th meeting), to insert in article 1, sub-paragraph (b), the words "save as provided in article 2", so that the final text read "without governmental interference, save as provided in article 2...". Thus, without prejudging the scope of the limitations to be included in article 2, the Committee had accepted the principle that some limitations should be imposed. They had been envisaged as duties which the right to freedom of information carried with it.

38. According to the Constitution of Peru, the State guaranteed freedom of the Press and the right of everyone to disseminate ideas through the Press or other media within the limits established by law. The Constitution also provided that offences committed by means of the Press should be judged in the regular courts. The 1945 law on printed matter, which was very liberal in conception, laid down general guarantees for the freedom of the Press.

39. The discussion on the draft Convention in the Third Committee had revealed two schools of thought, one stressing the freedom to be guaranteed and the other the duties which that freedom involved. Both sides had the same objective, the dissemination of accurate information. Like Argentina and Uruguay, Peru had had to fight for liberty and it knew that all societies need freedom in order to live without fear, choose their own path and arrive at the truth. Truth was not an abstraction which could be won once and for all, it was a living reality which mankind must continually seek to discover.

40. Article 2 should be approached with those considerations in mind. It was logically drafted, the principles that freedom of information carried duties and responsibilities with it being set forth in the first sentence and the scope of the admissible limitations being generally defined in the second. The limitations should be listed, as had been done in the article, in order to achieve precision, but it would be undesirable and even pernicious to attempt to give an exhaustive list. It was better to group them under several general headings, as was done in the Philippine working paper (A/C.3/L.878). That text was on the whole acceptable to his delegation, but, as the representatives of Argentina and Uruguay had pointed out, there was one serious gap: it contained no prohibition of prior censorship. Censorship could be justified in special circumstances, such as a state of war, but the draft Convention was meant to be applied in times of peace. With the additions proposed in the course of the debate, the Philippine text would constitute a useful basis for discussion.

41. In considering the article, the Committee should bear in mind that freedom was not something which could be taken for granted. It had to be struggled for, and protected by definite guarantees established by law. The need for freedom of expression was great in developed countries but even greater in those that were developing, for it was the best antidote to colonial thinking.

Mr. Farhâdi (Afghanistan), Vice-Chairman, took the Chair.

42. Mr. SAHNI (India) said that he wished to explain briefly the background of the five-Power working paper (A/C.3/L.880). It was just one more example

^{2/} *Ibid.*

of the spirit of conciliation which had been evident during all the discussions on freedom of information since the very beginning. It was stated, for instance, in paragraph 30 of the report of the Committee on the Draft Convention on Freedom of Information (A/AC.42/7 and Corr.1) that the Committee had been prepared to carry out its terms of reference in a conciliatory spirit and attempt to prepare a text likely to be acceptable to the majority in a conference of plenipotentiaries. As a member of that Committee, he himself had shown a similar spirit of compromise in voting for sub-paragraphs (g) and (h) of the original text of article 2 (sub-paragraphs (i) and (j) of the five-Power working paper) although they had not appeared very clear to him, because he had been assured that they were couched in satisfactory legal terms. The approach of the United States delegation in that Committee to the question of limitations in article 2 had been very much the same as that of the Philippine representative at the current session; both preferred a broad statement of principles to a detailed enumeration of cases.

43. As regards the origin of sub-paragraphs (c) and (d) of the five-Power working paper, the idea was to be found in essence in the draft Convention on the International Transmission of News and the Right of Correction adopted by the United Nations Conference on Freedom of Information in 1948^{3/} and had been

^{3/} See United Nations Conference on Freedom of Information, held at Geneva, Switzerland, from 23 March to 21 April 1948, Final Act, annex A.

elaborated in an amendment sponsored by India and three other delegations (see A/AC.42/7 and Corr.1, paras. 88 and 93) to article 2 of the text before the Committee on the Draft Convention on Freedom of Information; that amendment had been rejected by a very narrow margin and the Committee had considered (see A/AC.42/7 and Corr.1, para. 253) that it and another amendment along the same lines were of sufficient importance to request the Secretary-General to prepare a report on the legal problems raised by them. Pursuant to that request, the Secretary-General had submitted a memorandum (E/2046 and Add.1) quoting provisions in the laws of many different countries to show that the substance of the amendments not only could be but had been put into force. The idea of limitations therefore had a long and respectable history. Some delegations had expressed understandable apprehension about the extent to which Governments should be allowed to interfere with freedom of information. As a journalist himself he had the same apprehensions about some parts of the Philippine working paper (A/C.3/L.878), but like many other representatives, he felt that limitations were a necessary evil. He expressed the hope that a combined text that was satisfactory to all delegations could be evolved.

The meeting rose at 1 p.m.