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INGER ÖSTERDAHL

# FREEDOM OF INFORMATION IN QUESTION

FREEDOM OF INFORMATION IN INTERNATIONAL LAW AND THE  
CALLS FOR A NEW WORLD INFORMATION AND COMMUNICATION  
ORDER (NWICO)

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1

# Freedom of Information in Question

Freedom of information in international law  
and the calls for a New World Information  
and Communication Order (NWICO)

Inger Österdahl

## ABSTRACT

Inger Österdahl, *Freedom of Information in Question. Freedom of information in international law and the calls for a New World Information and Communication Order (NWICO)*

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The human right to freedom of information consists of the freedom to seek, receive and impart information and ideas of all kinds, through any media and regardless of frontiers. It is considered an indispensable element of a democratic society. This thesis opens with an analysis of the import of freedom of information under various international legal instruments, universal and regional.

The second part of the thesis shows how the developing countries, supported by the former Soviet bloc, began in the 1970s to question freedom of information, particularly on the international level. The kind of information in focus was principally news. It was claimed that the free international flow of news led to an unbalanced situation. The big Western news agencies dominating the international news flow were reporting more about the North than the South and their reports about the South were biased.

To remedy the imbalances, the developing countries, headed by the Movement of Non-Aligned Countries, proposed a New World Information and Communication Order (NWICO). This concept is closely related to the New International Economic Order (NIEO). The proposed NWICO included both normative and practical components. The normative part of the NWICO claims included such elements as guidelines for the content of international news reporting and far-reaching state responsibility for internationally distributed news. The practical part implied the strengthening of the developing countries' own mass media.

The idea of a NWICO caused a sharp reaction among the Western countries. The ensuing debate took place in Unesco and later also in the Committee on Information of the UN General Assembly. The debate turned on the issues of freedom of information, state responsibility for the activities of the mass media, state sovereignty and non-interference in the internal affairs of states. Opinions also differed concerning the role of the media in society.

The third and final part of the thesis deals with the outcome of the demands for a NWICO. The normative efforts of the NWICO proponents resulted in the Mass Media Declaration adopted by Unesco in 1978. The contents and significance of the Mass Media Declaration are analyzed in detail. A resolution spelling out the basis of a NWICO was also adopted by Unesco in 1980. The practical demands made in the name of a NWICO resulted in the creation of the International Programme for the Development of Communication (IPDC) under the aegis of Unesco.

Owing to its controversial nature the actual concept of a NWICO eventually disappeared from the agenda of Unesco by the end of the 1980s. A similar development can be seen in the debates and resolutions of the UN Committee on Information. The international debate on freedom of information will surely continue, however, but henceforth in different terms than a New World Information and Communication Order.

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# Abbreviations

AFDI	Annuaire Français de Droit International
AFP	Agence France Presse
AJIL	American Journal of International Law
ANPA	American Newspaper Publishers Association
AP	Associated Press
BONAC	Broadcasting Organization of Non-Aligned Countries
BYIL	British Year Book of International Law
CIA	Central Intelligence Agency
ch.	chapter
CNN	Cable News Network
CSCE	Conference on Security and Co-operation in Europe
DR	Decisions and Reports
DPI	UN Department of Public Information
ECOSOC	Economic and Social Council
ESCOR	Economic and Social Council Official Records
ETS	European Treaty Series
Eur. Comm. H.R.	European Commission of Human Rights
Eur. Court H.R.	European Court of Human Rights
Gen. Ass.	General Assembly
GAOR	General Assembly Official Records
Gen. Conf.	General Conference
GDR	German Democratic Republic
HRLJ	Human Rights Law Journal
HRQ	Human Rights Quarterly
IAPA	Inter-American Press Association
ICJ	International Court of Justice

ICLQ	International and Comparative Law Quarterly
IFJ	International Federation of Journalists
ILO	International Labour Organization
ILM	International Legal Materials
IOJ	International Organization of Journalists
IPDC	International Programme for the Development of Communication
IPS	International Press Service
ITAR-TASS	Informationoye Telegrafnoye Agentstvo Rossii- Telegrafnoye Agentstvo Sovetskovo Soyuz
LNTS	League of Nations Treaty Series
n.	note
NANAP	Non-Aligned News Agencies Pool
NIEO	New International Economic Order
NWICO	New World Information and Communication Order
OAS	Organization of American States
OAU	Organization of African Unity
Off. Rec.	Official Records
RCADI	Recueil des cours de l'Académie de droit international de La Haye
res.	resolution
RGDIP	Revue Générale de Droit International Public
Sess.	Session
SPC	Special Political Committee
Suppl.	Supplement
Tanjug	Telegraph Agency of New Yugoslavia
UK	United Kingdom
UN	United Nations
Unesco	United Nations Educational, Cultural and Scientific Organization
UNTS	United Nations Treaty Series
UPI	United Press International
US	United States of America
USSR	Union of Soviet Socialist Republics
YECHR	Yearbook of the European Convention on Human Rights

# Introduction

This thesis deals with freedom of information under existing international human rights agreements and how this freedom was called into question by the Third World and the then Soviet bloc during the 1970s and 80s. The criticism of the prevailing information order and the proposals for change were collected under the concept of a New World Information and Communication Order (NWICO). The NWICO in its turn was part of a larger pattern of criticism of the prevailing international order due to the breakthrough of the newly independent Third World countries on the international scene. The New International Economic Order (NIEO) is another and more conspicuous component of this larger pattern.

Because freedom of information—according to the Universal Declaration of Human Rights, the freedom to seek, receive and impart information and ideas regardless of frontiers—is considered a necessary prerequisite of a democratic society by the Western states, a sharp conflict arose when this very freedom was seriously called into question by the Third World and the Soviet bloc. Different ideological perspectives were set against each other. These different ideological perspectives generated different legal perspectives. The emphasis of the respective groupings on human rights differed, the emphasis on individual human rights versus rights of peoples or states differed, the emphasis on freedom of information versus content control differed, the emphasis on state sovereignty differed, the emphasis on state responsibility for the actions of private media enterprises differed etc.

The battles over which information order—the old or the new—should reign internationally were fought above all in Unesco but

also in the UN General Assembly. The debates generated a number of international instruments of a "soft law" character. In time the debate changed character in accordance with the general political shift which took place in the world at the end of the 1980s and beginning of the 90s.

With the change of views of the Soviet bloc, firstly, and later with its political disappearance, the ideological conflict over the prevailing information order has come to an end for the time being. The break of the Soviet bloc with its Socialist past has also affected the views held by the Third World representatives in the NWICO debate. The more substantial conflict *inter alia* in the field of information and communication which originates from the economic differences between the developed and the developing countries—the so called North–South conflict—however remains unaffected.

Although the Soviet bloc no longer exists, the opinions of the former Soviet bloc on freedom of information are quite extensively accounted for in this study, both in relation to the historical background of the right to freedom of information and in relation to the debate on a NWICO where Soviet views on freedom of information reappeared and were mixed with those of the developing countries.

The opinions of the former Soviet bloc are dealt with because the Soviet position has been an important element of the international post-World War II debate, indeed the East–West conflict was characteristic of the whole post-War era, and because the Soviet bloc provided important support for the demands for a NWICO. Furthermore, the political conflict between the West and the former Soviet bloc, manifested *inter alia* in the field of freedom of information, was to a large extent a conflict between democracy and totalitarianism and such a conflict may arise again in the world although most likely in different terms than the post-World War II conflict and perhaps with different parties. Thus even if the ideological conflict is over for the time being it may be regarded as an expression of a conflict of principle which may reappear on a large scale.

Even if the conflict over a NWICO as such is largely over, the debate contained a number of lasting issues which are not dependent on the existence of a democratic and a totalitarian bloc fighting each other, issues which are not related to the existence of a Berlin wall to put it simply. The issue of the universality of human rights which is implicit in the debate over a NWICO is constantly relevant. The issue of state

sovereignty versus human rights, for instance the human right to freedom of information, also remains relevant. On the national level in most if not all countries the issue of individual freedom of information versus government interference still remains a vital issue. Nor has the general issue of the quality of the international news transmission which was central to the calls for a NWICO lost its significance.

The purpose of this study is to compare the proposed NWICO with the rules on freedom of information under the existing international human rights agreements, including the Universal Declaration of Human Rights and the Helsinki Final Act, and to see what resulted from the demands for a NWICO.

In order to compare the proposed new information order with the old one it was necessary to find out what the NWICO proposals amounted to. It soon became obvious that the proposed new order when closely scrutinized turned out to be rather vague so great efforts have been made by the author during the work with this thesis on trying to find out what was really meant by a NWICO. The efforts to find out what a NWICO signified were not made easier by the fact that the meaning of a NWICO seemed to change in the course of time. Furthermore, there never seemed to be any real consensus on the contents of the desired NWICO even among its proponents.

In order to facilitate an understanding of the calls for a NWICO, relatively much space is devoted to the reasons behind these calls, and to the reasons behind the resistance of the West to a NWICO. It will become obvious that the NWICO proposals, although clearly having legal implications, also contain many components other than legal ones.

The study is divided into three parts. The first part deals with the historical background to the international law on freedom of information, the scope of freedom of information under the international human rights agreements and the restrictions to which it is subjected. This part is the legal backdrop against which the debate on a NWICO will then take place. The African Charter on Human and Peoples' Rights is included in this backdrop despite the fact that by the time it was adopted, in 1981, the debate on a NWICO had already been going on for several years.

The purpose of this part is to show what main principles are embedded in the articles on freedom of information. The means used in the interpretation of these articles are decisions of international judicial in-

stitutions, resolutions of international organizations, preparatory works in some instances, and secondary sources in the form of literature on the subject. In the case of UN General Assembly debates not relating directly to the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights, the official accounts of these debates of the Swedish delegation to the UN General Assembly have been used as a source.

The second and third parts of the study are devoted to the concept of a NWICO. The purpose of the second part is to show what reasons lay behind the demands for a NWICO and to contribute to an understanding of the proposals for a NWICO. For want of a systematic presentation of the contents of the desired NWICO on the part of its proponents, one way of finding out what the demands for a NWICO implied in positive terms is to study what has been criticized in the prevailing situation and what arguments have been invoked in favour of a new information order. The arguments invoked against a NWICO show how the opponents have interpreted its contents.

The purpose of the third part of the study is to show what the results of the demands for a NWICO were, most importantly, but not exclusively, in the form of legal or quasi-legal instruments. Part three also deals with the institutional framework surrounding the debate on a NWICO.

The material used in the second and third parts is records of debates in Unesco (above all the debates in the relevant Programme Commission) and in the UN Committee on Information, resolutions and declarations, other official Unesco and UN documents, official documents of the Movement of Non-Aligned Countries and literature on the subject. The NWICO proposals and their results are to the extent possible evaluated in the light of the content of the existing international law on freedom of information. It will be seen that it is sometimes difficult to compare the proposed new order with the old one because they are founded on such different values and conceptions, for instance that of human rights.

Parts 2 and 3 together comprise the whole history of the NWICO debate from a legal, political and institutional viewpoint. Indeed parts 1, 2 and 3 give a good picture of the debate on freedom of information during the entire post-World War II era.

This thesis thus deals with norms and debates on norms but not with the actual situation of the press within specific countries. Neither does it

deal with national laws on freedom of the press. References are made to the situation of the press here and there and one chapter is devoted to different conceptions of the role of the press in society but on the whole the study restricts itself to the level of international norms.

# 1 Freedom of information in international law

## 1.1 Historical background

### 1.1.1 The League of Nations

To the extent that information flows were discussed on the international level before 1945, they were not discussed in terms of international freedom of information. The wide divergence of opinion and especially of practice among states, as to the acceptable scope of that freedom, did not favour the emergence of any rule on freedom of information in international law.<sup>1</sup> On the contrary one of the first multilateral instruments in the field of information—the International Convention concerning the Use of Broadcasting in the Cause of Peace of 1936—clearly indicates that the flow of information was considered a matter of domestic public policy.<sup>2</sup> According to this convention states have the right to control and if necessary to suppress information transmitted by radio broadcasting, although for the benefit of other international obliga-

<sup>1</sup> Cf. Ioannou, "The International Debate Relating to Freedom of Information", *Council of Europe, Proceedings of the Sixth International Colloquy about the European Convention on Human Rights*, Seville 13–16 November 1985, p 210.

<sup>2</sup> Cf. Ioannou, *ibid.* The Convention concerning the Use of Broadcasting in the Cause of Peace was signed in Geneva on 23 September 1936 and entered into force on 2 April 1938, 186 LNTS 301. Parties to the Convention are: Afghanistan, Brazil, Bulgaria, Cameroon, Chile, Czechoslovakia, Denmark, Egypt, El Salvador, Estonia, Finland, Guatemala, Holy See, Hungary, India, Ireland, Laos, Latvia, Luxembourg, Malta, Mauritius, Mongolia, New Zealand, Norway, South Africa, Sweden, Switzerland and (the former) USSR. On the subject of the Broadcasting Convention see also Eek, "Principles Governing the Use of the Mass Media as Defined by the United Nations and UNESCO", in *National Sovereignty and International Communication*, Ed. by Kaarle Nordenstreng and Herbert I. Schiller, 1979, pp 187–188; Whitton "Propaganda and International Law", *RCADI*, vol. 72, 1948:I, pp 616–621.

tions.<sup>3</sup> “It was only after 1945 that freedom of expression and freedom of the press, as fundamental elements of a universal freedom of information, entered into (sic!) the international scene”.<sup>4</sup>

The Convention concerning the Use of Broadcasting in the Cause of Peace stipulates in Article 1 that: “[t]he High Contracting Parties mutually undertake to prohibit and, if occasion arises, to stop without delay the broadcasting within their respective territories of any transmission which to the detriment of good international understanding is of such a character as to incite the population of any territory to acts incompatible with the internal order or the security of a territory of a High Contracting Party.”

In Article 2 the High Contracting Parties “mutually undertake to ensure that transmissions from stations within their respective territories shall not constitute an incitement either to war /.../ or to acts likely to lead thereto.” Articles 3 and 4 deal with harmful statements “the incorrectness of which is or ought to be known to the persons responsible for the broadcast” and the prohibition and, should the occasion arise, rectification of which the High Contracting Parties mutually undertake to ensure on the one hand. On the other hand, according to Article 4, they also undertake to ensure that, especially in time of crisis, the accuracy of information concerning international relations is verified by the persons responsible before being broadcast.

The purpose of Article 5 was to promote in a positive manner the use of radio broadcasting in the cause of international peace and goodwill. Article 5 thus lays down the obligation of each State Party to place at the disposal of the others any information that would facilitate the broadcasting, by the others, of items calculated to promote a better knowledge of the civilisation and the conditions of life in the country in question, as well as of the development of its relations with other peoples and of its contribution to the organization of peace, i.e. the League of Nations at that time.

As we can see, these regulations of the international flow of information, particularly in Articles 1–4, are quite strict and thorough and do indeed concern the content of the information transmitted. It should be noted that the mass medium in question in the Convention is radio broadcasting—television had not yet come into existence in 1936 and

<sup>3</sup> Cf. Ioannou, *ibid.*

<sup>4</sup> Ioannou, 1985, *ibid.*, p 212. Cf. also Barrelet, *La liberté de l'information*, 1972, pp 47–49.

the printed media were probably not considered quite as effective and therefore as potentially dangerous a means for the spreading of war propaganda as radio broadcasting.

The UN General Assembly in 1954 requested the states party to the Broadcasting Convention to declare whether they wished to transfer to the UN the functions performed under the terms of the Convention by the League of Nations. It is unclear if they did so.<sup>5</sup> At least the UN Secretary-General has taken over the function of depositary of the Convention. In accordance with this resolution, further, the Secretary-General prepared a draft protocol including new articles providing that each state should report facts truly and objectively and refrain from radio broadcasts involving unfair attacks or slander against other people anywhere, and also that each state should not interfere with the reception within its territory of foreign radio broadcasts (so called jamming).<sup>6</sup> This draft protocol was circulated to the party states, but no final action has ever been taken.

On the whole the importance of the Broadcasting Convention has been and still is marginal. At the time of its adoption, Germany, Italy and Japan, who were guilty of the most aggressive pre-war propaganda, did not even sign the Convention.

Earlier in the short history of the League of Nations another instrument of some relevance to the issue of freedom of information was adopted—the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 1923.<sup>7</sup> This Convention was later amended by a Protocol signed on 12 November 1947 in order to transfer to the UN the functions and powers earlier invested with the League of Nations under the Convention.<sup>8</sup>

According to Article 1 of the Convention, which sums up all the material prohibitions contained in the instrument, the High Contracting Parties agree to take all measures to discover, prosecute and punish any person engaged in committing the subsequently enumerated offences which relate to the making, production or possession for purposes of

<sup>5</sup> Cf. UN Gen. Ass. res. 841 (IX), of 17 December 1954.

<sup>6</sup> Ibid.

<sup>7</sup> The Convention was adopted and opened for signature on 12 September 1923 and entered into force on 2 September 1924, 27 LNTS 213. Seventy states are parties to the Convention. The Convention of 1923 was preceded by the Agreement for the Suppression of the Circulation of Obscene Publications, of 4 May 1910.

<sup>8</sup> 46 UNTS 169.

trade, distribution or public exhibition of “obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects”. The remaining articles deal primarily with questions relating to the implementation of the Convention within the respective signatory states and between these states.

The Obscene Publications Convention has similarly not played any noticeable part in the post-World War II debates on international freedom of information. Although the generally embraced conceptions of obscenity have no doubt changed considerably since 1923, the protection of public morals is itself still a relevant issue, however, and most human rights instruments dealt with in this study, as we shall see, contain provisions concerning this issue; the protection of morals may be invoked as a legitimate justification for restrictions on freedom of information.

Although the Broadcasting Convention has not been ratified by many states, and furthermore had little impact on the course of events leading up to World War II, it did, however, mirror a growing concern with the international diffusion of information and ideas by means of the mass media (radio broadcasting in this case). Since the war, with the development of even more powerful means of mass communication, the damage caused by international war propaganda can probably become even more serious than before. Also, the more international communication and interaction there is on the whole, the more pertinent questions relating to international freedom of information in general—and not only in relation to war propaganda—will become.

### 1.1.2 Early work of the United Nations

After World War II, understandably, there was an immediate wish to come to grips with war propaganda through international regulation.<sup>9</sup>

<sup>9</sup> The early attempts by the UN to legislate specifically in the field of freedom of information have been investigated in detail by the late Swedish professor of international law Hilding Eek in *Freedom of Information as a Project of International Legislation. A Study of International Law in Making*, 1953. In 1961, Eek also authored a “Report on the Developments in the Field of Freedom of Information since 1954” on behalf of the UN (UN, ESCOR, 31st Sess., Agenda item 10 (part II), Doc. No. E/3443, 2 February 1961). Illustrating the pre- and post-War concern for propaganda cf. Preuss, “International Responsibility for Hostile Propaganda Against Foreign States”, *AJIL*, vol. 28, 1934, pp 649–668; van Dyke, “The Responsibility of States for International Propaganda”, *AJIL*, vol. 34, 1940, pp 58–73; Wright, “The Crime of ‘War-Mongering’”, *AJIL*, vol. 42, 1948, pp 128–136; Wright, “International Law and Ideologies”, *AJIL*, vol. 48, 1954, pp 616–625;

This could be done through the adoption of instruments outlawing war propaganda and the dissemination of false and distorted information as such. It could also be done through the adoption of rules proclaiming freedom of information, supposed to ensure a free flow of information and ideas nationally and internationally, and thus indirectly reducing the significance and effects of any potential propaganda and in the end also reducing the actual amount of propaganda itself. According to the latter approach, individual citizens should have different kinds of information and ideas to choose from; the individuals should not be “brainwashed” by being exposed to one particular point of view only. Consequently, according to the latter approach, it was the totalitarian use of the mass media which was the fundamental problem. Basically, the first outlook was embraced by the USSR, while the second was embraced primarily by the US. There were also those who favoured a more pragmatic combination of these two approaches.<sup>10</sup>

The general concern, furthermore, for individual human rights and freedoms immediately following World War II and thereafter spilled over into the field of information and communication giving support to the demands for a human right to freedom of information. This concern for human rights has grown successively over the years and today at the beginning of the nineties it seems to be greater than ever before.

The emphasis on individual human rights in general and particularly the *international* concern for human rights and the implementation of these rights within countries went against the traditional international law. According to international law before the creation of the UN Organization (and its subsequent work in the field of human rights) the sovereignty of states was considered a predominant principle in international law and the issue of human rights, to the extent it was discussed, was with few exceptions considered to lie within the exclusive domain of the state.<sup>11</sup>

Since World War II, and as a result of the experienced consequences of unlimited state supremacy which became evident immediately before, during and after the War, this aspect of international law has been

⇒

Whitton, *op. cit.* (n. 2), pp 545–659.

<sup>10</sup> Cf. UN, ESCOR, 16th Sess., Suppl. No. 12, *Freedom of Information—A report on contemporary problems and developments, with recommendations for practical action*, submitted by Salvador P. López, 6 May 1953, pp 17–18.

<sup>11</sup> Before the UN three areas of human rights were dealt with internationally: minority rights, workers' rights and the prohibition of slavery.

changing. Although state sovereignty has undeniably remained a central international legal tenet, far-reaching international concern with human rights has generally come to be considered desirable as well as legitimate. Some states have been less willing than others to renounce their exclusive sovereignty for the benefit of the international handling of human rights matters (this has also affected their position on individual freedom of information) but the trend clearly points toward a constantly stronger position of human rights vis-à-vis state sovereignty in international law.<sup>12</sup>

Ioannou gives the following four examples of factors which he regards, probably rightly, as being the most important leading up to the entrance of a universal freedom of information on the international scene:<sup>13</sup>

- a. the fresh experience of the Nazi era, during which freedom of information was a fundamental aspiration of occupied nations and peoples;

- b. the predominance of western liberal attitudes within the newly established United Nations Organisation;

- c. the emergence of the American news agencies as strong competitors of the traditional European agencies (Reuters, Havas and Wolff), for the sharing of international information market;

- d. the flexible first reaction of the states which were the ardent advocates of governmental control on the influx and diffusion of information within their territories. A similar moderate reaction was, of course, facilitated by the stage of technology at that time, which permitted an easy control of the dissemination of undesirable data.”

As is suggested by Ioannou in items b) and c) there was a strong American interest in the international proclamation of freedom of information after the War. As early as 1941 President Roosevelt delivered a famous message to Congress where he enumerated the “four essential human freedoms” that he wished the post-War world to be founded upon.<sup>14</sup> First of these freedoms came “freedom of speech and expression”. The three following essential human freedoms were freedom of religion, freedom from want and freedom from fear.

The prominent position of freedom of information was to be confirmed in a UN General Assembly resolution adopted during the very

<sup>12</sup> Cf., among others, Reisman, “Sovereignty and Human Rights in Contemporary International Law”, *AJIL*, vol. 84, 1990, pp 866–876.

<sup>13</sup> Ioannou, *op.cit.* (n. 1), p 212.

<sup>14</sup> Cf. *Keesing's Contemporary Archives*, vol. IV, 1940–1943, p 4464.

first session of the Assembly in 1946.<sup>15</sup> The actual subject of this resolution was, as stated in its heading, the “Calling of an International Conference on Freedom of Information”, which we shall return to. The resolution also includes a general statement of principle, however, which reflects the crucial importance that the General Assembly attached to the freedom of information.

“Freedom of information”, according to the first preambular paragraph, “is a fundamental human right and”, moreover, nothing less than “the touchstone of all the freedoms to which the United Nations is consecrated”. This implies that freedom of information is considered the necessary prerequisite of all the other human rights and freedoms which the United Nations is striving to secure around the world.

In the second preambular paragraph of the said resolution, the UN General Assembly states that freedom of information “implies the right to gather, transmit and publish news anywhere and everywhere without fetters”. And further, “[a]s such it is an essential factor in any serious effort to promote the peace and progress of the world”. This statement is significant in three ways. Firstly, it defines what freedom of information means in broad terms (see further chapter 1.2). Secondly, it gives a hint of the values which should permeate the international law- and policy-making in this field; both the stated freedom to “gather, transmit and publish news” itself and the role of this freedom “as such” in promoting the peace and progress of the world are important in this respect. Thirdly, it clearly places freedom of information at an international, as well as national, level by saying that it implies the right to gather, transmit and publish news *anywhere* and *everywhere*. In addition it says that freedom of information, presumably including international freedom of information, is essential for promoting peace.

The fourth preambular paragraph adds that “[u]nderstanding and co-operation among nations are impossible without an alert and sound world opinion which, in turn, is wholly dependent on freedom of information”.

In the third preambular paragraph an important qualification is added to the general honouring of freedom. It is reminiscent of the second, prohibitory, approach relating to war propaganda and the dissemination of false and distorted information referred to above. The third preambu-

<sup>15</sup> UN Gen. Ass. res. 59 (I), of 14 December 1946. The resolution was adopted unanimously.

lar paragraph of resolution 59(I) says: “[f]reedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent”. Still, the impression of the preamble as a whole is that the principle of conscientious exercise of the freedom of information contained in the third paragraph is subordinated to the principle of *freedom* of information as such.

One year before the adoption of resolution 59(I), on the 16 November 1945, the Constitution of the United Nations Educational, Scientific and Cultural Organization (Unesco) had been adopted incorporating as one, and the first, of the tasks of the Organization to “[c]ollaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the *free flow of ideas* by word and image” (Article I, para. 2(a)) (emphasis added).<sup>16</sup>

Many resolutions on the same two themes—freedom of information and the countering of war propaganda—would follow during the early years of the UN. In 1947 two resolutions were adopted on this subject.<sup>17</sup>

In the first one, entitled “Measures to be taken against propaganda and the inciters of a new war”, the General Assembly, referring in the preamble, *inter alia*, to “the scourge of war” and to “fundamental freedoms which include freedom of expression”, “[c]ondemns all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression.” Hereafter the General Assembly requested the government of each member state to promote friendly relations among nations, by all means of publicity and propaganda available to them and to encourage the dissemination of information expressing “the universally felt desire for peace”. This resolution was later referred to several times by the General Conference of Unesco.<sup>18</sup>

In the second resolution of 1947 entitled “False or distorted reports”,

<sup>16</sup> For the full text of the Constitution, see e.g. *Unesco Standard-Setting Instruments*, Unesco, Paris, 1986.

<sup>17</sup> UN Gen. Ass. res. 110 (II), of 3 November 1947, and Gen. Ass. res. 127 (II), of 15 November 1947.

<sup>18</sup> Unesco Gen. Conf. res. IV.1.5, 8th Sess., 1954; res. 5.31, 9th Sess., 1956; res. 5.202, 11th Sess., 1960.

the General Assembly, after a dutiful reference to “human rights and fundamental liberties”, invited the governments of member states, *inter alia*, to “study such measures as might with advantage be taken on the national plane to combat, within the limits of constitutional procedures, the diffusion of false or distorted reports likely to injure friendly relations between States”. In the preamble of this resolution the General Assembly also declares that “it is essential to facilitate and increase the diffusion in all countries of information calculated to strengthen mutual understanding and ensure friendly relations between the peoples”. This is somewhat different than facilitating the overall free exchange of information.

The qualification “within the limits of constitutional procedures” relates to the fact that different degrees of restriction on the freedom of information were, and are, allowed according to different constitutions. The nations whose constitutions would only allow a low level of restriction consequently did not want to assume any obligation, even moral, to place more far-reaching restrictions on the national freedom of information than was constitutionally possible.

Two years later, in 1949, the General Assembly, in a resolution entitled “Essentials of peace” called upon every nation (i.e. not only the member states) to “remove barriers which deny to peoples the free exchange of information and ideas essential to international understanding and peace”.<sup>19</sup> Here the idea that a free exchange of information and ideas as such constitutes the best guarantee for peace comes to the fore. That paragraph of resolution 290 (IV) is reaffirmed by the General Assembly in its resolution “Condemnation of propaganda against peace” of 1950, together with the whole of resolution 110 (II) cited above.<sup>20</sup>

In the “Condemnation of propaganda against peace” resolution the General Assembly also makes an attempt at defining what “propaganda against peace” consists of. It declares that such propaganda includes (1) incitement to conflicts or aggression, (2) measures tending to isolate the peoples from any contact with the outside world through press, radio and other media of communication and (3) measures tending to silence or distort the activities of the UN in favour of peace or to prevent their peoples from knowing the views of other states members.

In 1950, furthermore, the General Assembly adopted a resolution on

<sup>19</sup> UN Gen. Ass. res. 290 (IV), of 1 December 1949, voted against by the Soviet bloc.

<sup>20</sup> UN Gen. Ass. res. 381 (V), of 17 November 1950. The result of the vote was 49–0–7.

“Freedom of information: interference with radio signals”.<sup>21</sup> In this resolution the General Assembly states that interference with radio signals—jamming—“[c]onstitutes a violation of the accepted principles of freedom of information”.<sup>22</sup> The Assembly further “[c]ondemns measures of this nature as a denial of the right of all persons to be fully informed concerning news, opinions and ideas regardless of frontiers”, and “[i]nvites the governments of all Member States to refrain from such interference with the right of their peoples to freedom of information”. Then the Assembly, again, “[i]nvites all governments to refrain from radio broadcasts that would mean unfair attacks or slanders against other peoples anywhere and in so doing to conform strictly to an ethical conduct in the interest of world peace by reporting facts truly and objectively”.

In a third resolution in 1950, “Question of the freedom of information and of the Press in times of emergency”, the General Assembly “[r]ecommends to all Member States that, when they are compelled to declare a state of emergency, measures to limit freedom of information and of the Press shall be taken only in the most exceptional circumstances and then only to the extent strictly required by the situation”.<sup>23</sup>

The Soviet bloc countries voted against the latter two resolutions. The jamming in question in the first resolution was basically Soviet bloc jamming of Western radio broadcasts directed towards Eastern Europe and the Soviet Union by the stations Voice of America, Radio Liberty and Radio Free Europe. This jamming was carried out, with some interruptions when the East–West relations temporarily improved, until the end of the 1980s.

In 1952, again, the UN General Assembly pronounced against the dissemination of “false and distorted information”.<sup>24</sup> In this resolution the General Assembly declared that “the dissemination of false or distorted information by national as well as international information enterprises is one of the causes of the lack of mutual understanding among nations, to the detriment of international harmony”. Unusually enough, the condemnation of the dissemination of false and distorted

<sup>21</sup> UN Gen. Ass. res. 424 (V), of 14 December 1950, voted against by the Soviet bloc.

<sup>22</sup> Jamming also conflicts with the International Telecommunications Convention, Article 35, published by the General Secretariat of the International Telecommunication Union, Geneva. The latest version in force is from Nairobi, 6 November 1982.

<sup>23</sup> UN Gen. Ass. res. 425 (V), of 14 December 1950, voted against by the Soviet bloc.

<sup>24</sup> UN Gen. Ass. res. 634 (VII), of 16 December 1952.

information in this case is not balanced by any recognition of the benefits of freedom of information as such.

A couple of years later, in 1954, the balance is more than resumed by the resolution "Strengthening of peace through the removal of barriers to free exchange of information and ideas".<sup>25</sup> The General Assembly recalls its earlier resolutions 110 (II) of 1947 and 381 (V) of 1950 concerning war propaganda and resolution 290 (IV) of 1949 on the essentials of peace. Thereafter the General Assembly, significantly, recognizes that the maintenance of barriers to the free exchange of information and ideas "constitutes a major obstacle to the strengthening of peace and genuine international co-operation and fosters the continuation of false and hostile propaganda against other States and peoples".

The initiative behind the placing of the item "Prohibition of War Propaganda" (which subsequently became resolution 819 (IX)) on the agenda, of the Ad Hoc Political Committee, had been taken by Czechoslovakia who also presented a draft resolution on the subject. Of the original draft only the first preambular paragraph referring to the cessation of hostilities in Korea and the restoration of peace in Indo-China was retained, whereas the Ad Hoc Political Committee changed the essential parts of the text. The Soviet bloc then voted against the resolution, although the resolution clearly also condemned "all forms of propaganda, in whatsoever country conducted, which is either designed or likely to provoke or encourage any threat to the peace, breach of peace or aggression".<sup>26</sup>

The competition between the two fundamentally different approaches referred to earlier concerning the handling of war propaganda—the prohibitive and the permissive approach—manifests itself time and again. According to the permissive approach, coinciding primarily with the US position, it was the barriers to the free international exchange of information and ideas which fostered false and hostile propaganda. According to the prohibitory approach, coinciding with the view of the USSR, the contrary was true; a free exchange of information and ideas would inevitably entail hostile propaganda which in its turn would give rise to hostile international relations.

<sup>25</sup> UN Gen. Ass. res. 819 (IX), of 11 December 1954, voted against by the Soviet bloc.

<sup>26</sup> Cf. *Aktstycken utgivna av Kungl. utrikesdepartementet*, [Documents published by the Royal Swedish Ministry for Foreign Affairs], Ny Serie I:A:5, Förenta Nationernas Generalförsamlingens nionde ordinarie möte, New York, 1954, pp 61–62.

According to the first approach peace is most effectively promoted by "the removal of barriers" to the free exchange of information and ideas whereas, according to the second approach, peace is furthered by "the imposition of barriers". It should be added that not even the US favoured a completely free international flow of information. The necessity of some limits are recognized by all states, but there have been wide enough differences of meaning as to where the limits should be drawn to be able to speak of fundamentally different approaches.

In the following years, i.e. until the debate on freedom of information was resumed at the end of the 1970s, the number of substantive UN General Assembly resolutions on the issue of freedom of information and measures to prevent war propaganda decreased. The reason for this was certainly not that the subject was considered less important, but the ideological cleavages became more and more obvious and it became accordingly more and more difficult to perform any work in this particular field within the UN. In 1957, however, the General Assembly adopted quite an extensive resolution on "Freedom of information".<sup>27</sup>

In part B of this resolution the General Assembly recognized that "the media of information have a more important role than ever before in strengthening friendly relations between peoples and that a free flow of accurate and undistorted news and information is a powerful factor in maintaining international peace and understanding". The passage "a free flow of accurate and undistorted news and information" may be noted in the light of what we have said about the two different approaches, which seem to have been combined here.

In 1958, in a similar resolution on "Freedom of information", the General Assembly in part B reiterated its belief in "the free flow of undistorted news and information within countries and across national frontiers as the essential basis for an accurate and undistorted understanding of events and situations" and recommended all member states to facilitate "the free flow of accurate information through all media".<sup>28</sup> According to the official report of the Swedish delegation to the UN, it was the Dominican Republic who suggested the insertion of the qualifications "undistorted" and "accurate".<sup>29</sup> In relation to a similar passage

<sup>27</sup> UN Gen. Ass. res. 1189 (XII), of 11 December 1957.

<sup>28</sup> UN Gen. Ass. res. 1313 (XIII), of 12 December 1958.

<sup>29</sup> Cf. *Aktstycken utgivna av Kungl. utrikesdepartementet*, [Documents published by the Royal Swedish Ministry for Foreign Affairs], Ny Serie I:A:9, Förenta Nationernas Generalförsamling

in part A of the same resolution the Soviet Union insisted upon the insertion of “accurate and undistorted” (news and information ...).<sup>30</sup> In the Social, Humanitarian and Cultural Committee (Third Committee) of the General Assembly the Scandinavian States and the US, among others, voted in both cases against the insertion of these qualifications.<sup>31</sup> At the final vote in the General Assembly this opposition was not maintained, however.

### 1.1.3 The Conference on Freedom of Information of 1948

Further strong evidence of the great significance attached to the question of freedom of information at the beginning of the history of the UN was, in addition to all the General Assembly resolutions on this issue, the summoning by the UN of an international conference on freedom of information in Geneva in the spring of 1948.<sup>32</sup> This Conference was referred to earlier in connection with resolution 59 (I) of 14 December 1946 declaring, as we saw, freedom of information to be “a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated” and calling for a conference on this subject. The purpose of the conference, according to resolution 59 (I), was to “formulate its views concerning the rights, obligations and practices which should be included in the concept of the freedom of information.” The Conference was organized by the the Economic and Social Council (ECOSOC) through its Sub-Commission on Freedom of Information and of the Press which functioned from 1947–1952.

The Conference proposed three draft conventions which were to be referred to ECOSOC for further study and it also passed a large number of resolutions (43 altogether) concerning different aspects of freedom of information. The three draft conventions which resulted from the Conference were a Draft Convention on the Gathering and International Transmission of News (“the American convention”), a Draft Convention concerning the Institution of an International Right of Correction (“the French convention”) and, finally, a Draft Convention on Freedom

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trettonde ordinarie möte, New York, 1958, p 158.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> For a detailed analysis of the proceedings and outcome of the Conference on Freedom of Information, see Eek, 1953, op.cit. (n. 9); Whitton, “The United Nations Conference on Freedom of Information and the Movement against International Propaganda”, *AJIL*, vol. 43, January 1949, pp 73–87. For documentation see UN Yearbook on Human Rights for 1948, pp 494–515.

of Information (“the British Convention”).

Of the three Draft Conventions, so far only one has developed into what it was meant to become, a binding international agreement, and that is the Draft Convention concerning the Institution of an International Right of Correction which was adopted by the UN General Assembly in 1952.<sup>33</sup>

The Convention states, in Article II para. 1, that “in cases where a Contracting State contends that a news dispatch capable of injuring its relations with other States or its national prestige or dignity transmitted from one country to another by correspondents or information agencies of a Contracting or non-Contracting State and published or disseminated abroad is false or distorted, it may submit its version of the facts /.../ to the Contracting States within whose territories such dispatch has been published or disseminated.”

This seemingly far-reaching right of having one’s own version of the facts spread through the mass media of other contracting states is substantially limited by two factors. Firstly, the small number of states who have ratified the Convention in practice reduces its field of application. Secondly, the enforcement procedures, if a state should decide to complain about a news dispatch, are clumsy and inefficient, and the state receiving a complaint if at all co-operative has no means of coercing any mass medium into actually publishing the corrected news dispatch.

The receiving state only undertakes to “transmit” the so called communiqué “to the correspondents and information agencies operating in its territory” (Article III). As a last resort the state launching a complaint under the present Convention may turn to the Secretary-General of the UN who is obliged to “give appropriate publicity through the information channels at his disposal to the communiqué” within ten days (Article IV).

Thirdly, an additional limiting factor is inherent in the concept of “right of correction” and appears in para. 2 of Article II. A “communiqué”, according to this rule, must be without comment or expression of opinion, i.e. it must be concerned with strictly factual errors only, whereas, probably, most potentially irritating international news dis-

<sup>33</sup> UN Gen. Ass. res. 630 (VII), of 16 December 1952. The Convention was opened for signature in New York on 31 March 1953 and entered into force on 24 August 1962, 435 UNTS 191. Parties to the Convention are: Burkina Faso, Cuba, Cyprus, Egypt, El Salvador, Ethiopia, France, Guatemala, Jamaica, Sierra Leone, Uruguay, Yugoslavia.

patches, if at all blameworthy, are not incorrect in a strict sense but rather “tendentious”. This is, in fact, a frequently recurring complaint in the context of international news reporting; see further chapter 2.1.

A wider version of the right of correction is found in the American Convention on Human Rights,<sup>34</sup> Article 14, which lays down the “right of reply”. According to this article, para. 1, “[a]nyone injured by *inaccurate or offensive statements or ideas* (emphasized here) disseminated to the public in general by a legally regulated medium of communication has the right *to reply or make a correction* (emphasized here) using the same communication outlet, under such conditions as the law may establish”. Irrespective of the difficulties which no doubt exist also in the case of the American Convention in relation to the enforcement of this rule, the right of reply as defined by Article 14 of the American Convention permits more kinds of reactions than mere corrections of erroneous presentations of facts.

Also, Article 14 of the said Convention permits reactions to more kinds of mass media items: whereas the Convention on the International Right of Correction states that a “communiqué” may be issued only with respect to a “new dispatch” (Article II para. 2), Article 14 of the American Convention envisages that ideas as well as statements may be injurious. Perhaps also the concept of “statement” itself may be understood as being broader than “news dispatch”.

In conclusion, it must be added that the intended subjects of the rules on the “right of correction” and the “right of reply” are not identical; the Convention of the International Right of Correction has “Contracting States” in mind whereas Article 14 of the American Convention primarily applies to individual citizens. Perhaps this explains at least part of the difference in scope of the permitted retorts; one can imagine the large amount of replies on political grounds that would appear on the international news market if states were allowed to “reply” in the sense of the American Convention.

The remaining two Draft Conventions emanating from the Conference on Freedom of Information, on the Gathering and International Transmission of News and on Freedom of Information, have never developed into anything more than just drafts. The draft concerning the Gathering and International Transmission of News was aimed at facilit-

<sup>34</sup> Adopted on 22 November 1969, entered into force on 18 July 1978, 9 ILM 673. See further ch. 1.2.5.

ating the work in general and access to news material in particular of foreign correspondents. The Draft Convention on Freedom of Information was intended to define and explicate the elusive concept of freedom of information on the whole, and enumerate the freedoms, on one hand, and the duties and responsibilities, on the other, which should be included in the concept.

The Draft Convention on Freedom of Information was opened by a declaration of principle, in its first preambular paragraph, according to which the party states consider that “the free interchange of information and opinions, both in the national and in the international sphere, is a fundamental human right and essential in the cause of peace and for the achievement of political, social and economic progress”.<sup>35</sup>

As a matter of fact, the Draft Convention on the Gathering and International Transmission of News for a while seemed to meet a better fate than it eventually did. During the third session of the General Assembly, in the spring of 1949, this draft was brought together with the Draft Convention concerning the Institution of an International Right of Correction into one Draft Convention on the International Transmission of News and the Right of Correction. This draft was adopted by the General Assembly but it was not supposed to be opened for signature until the Draft Convention on Freedom of Information had also been adopted by the General Assembly.<sup>36</sup> Later, in 1952, the International Right of Correction was again isolated and a corresponding Convention was brought about.<sup>37</sup>

The debate during the third session which preceded the adoption of the combined Draft Convention in 1949, however abortive, is worth noting. The Draft Convention on Freedom of Information was not dealt with during this session of the General Assembly, its consideration was postponed. According to the official report of the Swedish delegation, a sharp conflict appeared during the debate in the Third Committee “between countries with a well developed national news service and those countries, which in this respect are less favoured. The representatives of the former wanted as few restrictions as possible with regard to the news-distribution. The representatives of the latter, however, were anxious to have included provisions for the protection against false or

<sup>35</sup> UN Yearbook on Human Rights for 1948, “Draft Convention on Freedom of Information”, p 50.

<sup>36</sup> UN Gen. Ass. res. 277 (III) A and C, of 13 May 1949.

<sup>37</sup> See *supra* (n. 33).

distorted reports from foreign news agencies, in that they claimed that if the convention conferred rights on the news agencies it should also confer certain obligations on the agencies. The Latin American and Asian delegations were eager to change parts of the draft text in a more restrictive spirit and succeeded during the consideration of articles 9, 10 and 12 in getting the majority of the Committee together on drafts in that direction.<sup>38</sup> However, after the representatives of a large number of countries including the United States, the United Kingdom, France and the Scandinavian countries, had explained that their governments could not adopt a convention containing such restrictive provisions, the Committee agreed on compromise solutions acceptable to both lines of opinion.”<sup>39</sup>

The only African states represented at the UN at this point in time were Ethiopia, Egypt, Liberia and South Africa. It was not clear whether the author of the official Swedish account includes the Soviet bloc among the countries having a less well developed news-service. Probably this is not the case, but the Soviet bloc certainly sympathized with the more restrictive approach of the Latin American and Asian delegations. The debate in the Third Committee gave evidence of the already existing antagonism between West and East but it also foreboded the coming bitter antagonism, on the information issue as well as many others, between North and South, or rather between West on one hand and East and South, whose interests tended to coincide, on the other. Naturally, the more developing countries that became independent, the more influential the East-South group was to become. Very recently, at the end of the 1980s and beginning of the 1990s, a regrouping of alliances has taken place (concerning the impact of these developments on the issue of freedom of information see further parts 2 and 3).

So, while the Draft Convention on the International Transmission of News *and* the Right of Correction seemed to be ready for signature in 1949, the discussions concerning the Draft Convention on Freedom of Information were to continue. Not surprisingly the deliberations on this,

<sup>38</sup> Articles 9 and 10 concerned the right of correction and Article 12 the rights of the contracting states with regard to the protection of national security and public order, public morals and decency, and national defence.

<sup>39</sup> *Aktstycken utgivna av Kungl. utrikesdepartementet*, [Documents published by the Royal Swedish Ministry for Foreign Affairs], Förenta Nationernas Generalförsamlings tredje ordinarie möte, Paris 1948, New York 1949, p 143. At the General Assembly vote the result was 33–6–13, with the Western and some developing nations voting in favour, the Soviet bloc voting against, and the remaining developing countries abstaining.

the most politically sensitive of the three original convention subjects, almost immediately came to a deadlock. At the fourth session of the General Assembly in the autumn of 1949, the United States, the Netherlands, and the United Kingdom suggested that the draft Convention on the International Transmission of News and the Right of Correction should be opened for signature irrespective of the fate of the draft Convention on Freedom of Information. This proposal was voted down in the Third Committee, however. Hereafter, the Western enthusiasm (with France as a notable exception) for all conventions in the field of freedom of information decreased dramatically, whereas the Eastern bloc and the developing countries persevered.

At the seventh session of the UN General Assembly in 1952–53, it was maintained by the Western states against the demands of the developing states primarily, that the existing draft Convention on Freedom of Information contained too many restrictions to favour the cause of freedom of information. This being the case they considered it better not to have any convention at all.<sup>40</sup> The Soviet bloc for its part emphasized the need for measures against war propaganda and national hatred.<sup>41</sup>

In 1954, it was maintained by the West, in vain, that it would be meaningless to continue the work on the draft Convention because of the apparent differences of opinion as to what freedom of information implied.<sup>42</sup> Answering the demands for a convention, the Swedish delegate in the Third Committee acidly remarked that to the extent that freedom of information was limited in some places this could hardly be ascribed to the absence of a convention.<sup>43</sup> Also in 1954 the similarly controversial plans of working out, on an inter-governmental level, an international code of ethics for information personnel were shelved.<sup>44</sup>

In 1958 the issue of a Convention on Freedom of Information was substantively debated in the Third Committee for the last time. The Eastern and developing countries' demands for a convention were again

<sup>40</sup> Cf. *Aktstycken utgivna av Kungl. utrikesdepartementet*, [Documents published by the Royal Swedish Ministry for Foreign Affairs], Ny Serie I:A:3, Förenta Nationernas Generalförsamlings sjunde ordinarie möte, New York 1952–53, pp 124–125.

<sup>41</sup> *Ibid.*, p 124.

<sup>42</sup> Cf. *Aktstycken utgivna av Kungl. utrikesdepartementet*, [Documents published by the Royal Swedish Ministry for Foreign Affairs], *supra* (n. 26) p 91.

<sup>43</sup> *Ibid.*

<sup>44</sup> Cf. UN Gen. Ass. res. 838 (IX), of 17 December 1954, Draft International Code of Ethics for the use of information personnel. This issue will reappear in the debate on a New World Information and Communication Order (NWICO).

rejected, without result, by the West—above all by the Anglo-Saxon countries—referring to the impossibility of reaching a text acceptable to a great majority of states.<sup>45</sup> It was particularly emphasized, as in 1952, that the existing draft gave the impression of dealing only with restrictions on freedom of information rather than with freedom of information as a guiding principle, as it should.<sup>46</sup> The proposed exceptions to the freedom of information were too numerous and too vague.<sup>47</sup>

When it had become obvious that, under the prevailing political situation, it would be impossible to adopt any conventions either on freedom of information as such or on the gathering and international transmission of news, the UN Economic and Social Council (ECOSOC) in 1960 tried to move the issue forward by adopting a draft Declaration on Freedom of Information instead.<sup>48</sup> The Declaration is inspired by the relevant provision in the Universal Declaration of Human Rights of 1948,<sup>49</sup> which we shall return to in chapter 1.2.2.1, and the preamble points out, *inter alia*, that “freedom of information is ... fundamental to peaceful and friendly relations between peoples and nations, since the erection of barriers to the free flow of information obstructs international understanding and thus impairs prospects for world peace”. This corresponds to the permissive approach to the question of freedom of information and the combating of war propaganda as presented above.

In accordance with resolution 756(XXIX) of the ECOSOC<sup>50</sup> the draft Declaration was transmitted to the General Assembly where it remained in a state of limbo. In 1961, the Third Committee of the General Assembly adopted the preamble and articles 1–4, of a total of 19 articles, of the draft Convention on Freedom of Information.<sup>51</sup>

From this time on the item of a Draft Convention and Draft Declaration on Freedom of Information (under the common title of “Freedom of

<sup>45</sup> Cf. *Aktstycken utgivna av Kungl. utrikesdepartementet*, [Documents published by the Royal Swedish Ministry for Foreign Affairs], *supra* (n. 29), pp 157–158. Cf. UN Gen. Ass. res. 1313 (XIII) C, of 12 December 1958 (49–16–10).

<sup>46</sup> *Ibid.*, p 158.

<sup>47</sup> *Ibid.*

<sup>48</sup> UN, ESCOR, 29th Sess., Agenda item 11, Annexes, Doc. No. E/3359, 20 April 1960, p 2, res. 756(XXIX), of 21 April 1960, plus Annex.

<sup>49</sup> Adopted by UN Gen. Ass. res. 217 A (III), of 10 December 1948.

<sup>50</sup> See n. 48.

<sup>51</sup> Reproduced in UN Doc. No. A/8340, 23 August 1971, as Annexes I and II.

Information”) was postponed from session to session of the General Assembly, without its substance being dealt with, and, in fact, remained on the agenda until and including its 34th session in 1979.<sup>52</sup> Apart from everything else that had happened in the meantime, this item had by then been transferred from the Third Committee to the Special Political Committee (SPC) and the name of the item had significantly been changed into “Questions Relating to Information”.

In 1968, in connection with the fact that that year had been proclaimed the International Year for Human Rights, a resolution was adopted also on Freedom of Information.<sup>53</sup> In the seventh operative para. of this resolution, although no work had been carried out for many years on this issue, the General Assembly duly “[d]ecides, pending completion of the draft Convention on Freedom of Information, to give priority at its twenty-fourth session to the consideration and adoption of the draft Declaration on Freedom of Information so that it may serve as an inspiration and set a standard for information media as well as Governments anywhere in the world.”

Apart from this formal reference to the Convention and Declaration, the 1968 resolution is also interesting in some other respects since it indicates several issues which were to become prominent in the international debate on freedom of information in the 1970s and 1980s. In the preamble it is noted for example that “recent technological advances in the field of telecommunications /.../ greatly magnified the potentialities, for good or evil, of the media of information” and that “the existence of monopolies in the media of information is an obstacle to /.../ the full achievement of freedom of information.” The latter item was introduced by Chile.<sup>54</sup>

In operative para. 3 it is recommended, somewhat paradoxically, that “freedom of information should be particularly promoted in the case of dissemination of information on the evils of apartheid, racism, nazism, colonialism and racial discrimination.” This item along with several others on the same lines, some adopted some not, was proposed by

<sup>52</sup> Cf. Gen. Ass. decision 33/425, of 18 December 1978; Questions Relating to Information, Report of the SPC, UN Doc. No. A/35/765, 12 December 1980, p 1.

<sup>53</sup> UN Gen. Ass. res. 2448 (XXIII), of 19 December 1968.

<sup>54</sup> Cf. *Aktstycken utgivna av Kungl. utrikesdepartementet*, [Documents published by the Royal Swedish Ministry for Foreign Affairs], Ny Serie I:A:18, Förenta Nationernas Generalförsamlings tjugotredje ordinarie möte, New York 1968, p 228.

Ukraina.<sup>55</sup> In operative para. 4, further, the General Assembly “[a]ppeals to the media of information everywhere to co-operate in the strengthening of democratic institutions, the promotion of economic and social progress and friendly relations among nations, and combating propaganda for war or for national, racial or religious hatred, in accordance with the principles of the United Nations”.

In operative para. 5, finally, the General Assembly “[d]raws the attention of the United Nations bodies and specialized agencies concerned to the continuing need for assistance in the development and improvement of information media in the developing countries in order to enable the latter to share in the benefits flowing from the modern technological revolution and to redress the inequality in this field between the developed and the developing countries”.

The issues covered by these quotes are firstly the increased significance of the mass media in general which partly lay behind the resurgence of the issue of freedom of information in the 1970's, although under the name of a New World Information and Communication Order (NWICO). The increased significance of the mass media also led to rising expectations as to the performance of the media. A logical consequence of this, in its turn, was the belief that the mass media should indeed be used for certain particular purposes. A second issue covered by the resolution of 1968 is the problem of media monopolies, which was originally invoked by the Eastern and developing states against the West but which has lately been increasingly recognized also by the Western states themselves. Thirdly, the resolution indicates the question whether freedom of information should imply spreading information about a number of specific issues like apartheid, racism, nazism, colonialism and racial discrimination. Fourthly, and related to the third point, the issue is raised as to whether or not the mass media should co-operate in the furtherance of certain political, economic and social causes. Fifthly, the break-through of the developing countries on the international scene is evident from the 1968 resolution and this break-through would entail severe criticism of the prevailing factual international situation and international law relating to freedom of information, followed by persistent demands for change and assistance.

Apart from indicating coming issues in the information debate, the

<sup>55</sup> Ibid.

resolution of 1968 also, in operative para. 1, states somewhat ambiguously that "the primary function of media of information anywhere in the world is to gather and impart freely and responsibly *objective* and *accurate* information" (emphasis added).

The result of the General Assembly vote on the 1968 resolution was 95–8–12. This voting result shows, firstly, the greatly increased number of members of the UN, significant also for the information issue. Secondly, and significantly, the countries voting in favour of the resolution were mainly developing countries. Not quite typically, considering the future development of this issue, the ones voting against were the Soviet bloc states—not enough Ukrainian amendment proposals in the direction of "apartheid, racism, nazism, colonialism and racial discrimination" etc. had been adopted. Not so typically either, the states abstaining were Western, but not all Western states abstained. The Western states for their part were of the opinion that too many Ukrainian qualifications of the freedom of information had been inserted in the resolution, and they also objected to the Chilean counter-monopoly amendment.<sup>56</sup> They were also sceptical of the reference in operative para. 7 to the draft Convention on Freedom of Information, a project in regard to which they had already given up hope in the early 1950s.

The fact that no Convention on Freedom of Information was ever adopted does not mean that there are no rules on freedom of information at all in international law. While the drafting of a convention in the particular field of freedom of information met insuperable obstacles, it was still possible to include general provisions regarding freedom of information in the Universal Declaration of Human Rights and in the subsequent international conventions on human rights, universal and regional. These are the rules which will be dealt with in chapters 1.2 and 1.3 together with relevant international judicial practice. Freedom of information within the framework of the Conference on Security and Co-operation in Europe (CSCE) will also be touched upon. But before that the concept of freedom of information itself will be analyzed more in depth.

<sup>56</sup> Ibid.

## 1.2 Freedom of information under existing international instruments

### 1.2.1 Concept and terminology

Freedom of information is a concept closely related to the freedoms of thought and opinion on the one hand and to the freedoms of speech, of expression and of communication, on the other. The freedoms of thought and opinion are also necessary prerequisites of the freedoms of the press, of expression, of speech, of information and of communication. The exercise of the latter can be said to constitute the external manifestation of the exercise of the former.

The distinction between the external freedoms themselves is more difficult to make. Between the freedoms of speech and of expression no distinction seems to be necessary, the two concepts are largely equivalent.<sup>1</sup> Freedom of the press relates to the printed word whereas freedom of expression is a wider concept and makes no qualification as to medium. The term freedom of the press is sometimes used in a transferred sense to denote freedom of expression in general. Historically freedom of expression has for natural reasons mainly been exercised by means of the written word. It is only recently that other mass media have entered the scene. That is the reason why freedom of the press and freedom of expression are so intimately associated with each other. Freedom of expression is not necessarily exercised through a mass medium but that is most often the case, at least it is usually in relation to the mass media that discussions or controversies concerning freedom of expression arise.

Between freedom of expression and freedom of information it is harder again to make a distinction. Freedom of information in the international human rights instruments is usually defined as “the freedom to seek, receive and impart information and ideas through any media” (and regardless of frontiers). Like freedom of expression, freedom of information clearly also comprises freedom of the press. Jumping over freedom of expression, Salvador P. López in a UN report from 1953 on freedom of information writes that “[f]reedom of information is freedom of the Press by extension; it takes into account the other powerful

<sup>1</sup> Cf. Barendt, *Freedom of Speech*, 1987, p 38.

media of mass communications which modern technology has placed in the service of ideas, as well as the rights and interests of the consumer of news.”<sup>2</sup>

That which López says about freedom of information could be said of freedom of expression, but maybe freedom of information tends to be more associated with the mass media than freedom of expression. This impression is confirmed by Newman and Vasak, who first note that freedom of expression includes the right to seek, receive and impart information and ideas and then say that “[w]hen freedom of expression is put to use by the mass media, it acquires an additional dimension and becomes freedom of information.”<sup>3</sup> Newman and Vasak use the term “right” to seek, receive and impart etc. whereas the Universal Declaration and other instruments talk of “freedom” to seek, receive and impart. Probably, this difference in terminology is not significant, however.

Barrelet goes directly from “the classical notion of freedom of the press” to freedom of information and writes that freedom of information embraces freedom of the press and its definition indicates that the protection extends over the whole progress of a news item or of an idea from its origin to its arrival at its final destination, the reader, listener or viewer.<sup>4</sup> The UN General Assembly resolution 59(I) of 1946—the “touchstone” resolution—also indicates that freedom of information has a mass medial character when it declares that “freedom of information implies the right to gather, transmit and publish *news* anywhere and everywhere without fetters” (emphasis added).

At a “Symposium on Human Rights and Mass Communications” organized by the Consultative Assembly of the Council of Europe in 1968, one participant, Sigemann, writing on behalf of the Legal Affairs Committee of the Consultative Assembly, was of the opinion that freedom of expression includes freedom of information whereas another participant, Bourquin from Switzerland, was of the opposite opinion—freedom of information includes freedom of expression.<sup>5</sup>

<sup>2</sup> López, *op.cit.* ch. 1.1.2 (n. 10), p 2; cf. also Eek, 1953, *op.cit.* ch. 1.1.2 (n. 9), chapter II, who seems to be of the same opinion.

<sup>3</sup> Newman and Vasak, “Civil and Political Rights”, in *The International Dimensions of Human Rights*, Ed. by Karel Vasak and Philip Alston, vol. I, 1982, p 155.

<sup>4</sup> Barrelet, *op.cit.* ch. 1.1.1 (n. 4), 1972, p 47.

<sup>5</sup> *Council of Europe. Consultative Assembly. Symposium on Human Rights and Mass Communications*, Salzburg, 9–12 September 1968, pp 5 and 25–26 respectively.

In a more recent publication of the Council of Europe, Bullinger uses only the term freedom of expression when analyzing what others could call freedom of information. Bullinger expressly avoids the term freedom of information, "since it is often used without a precise meaning or with different meanings."<sup>6</sup> In the same publication, Ioannou writes that freedom of expression and freedom of the press together constitute the "universal freedom of information", which is the term he subsequently uses to denote the same thing, basically, as Bullinger.<sup>7</sup>

In an article on the subject Partsch uses the term freedom of expression exclusively,<sup>8</sup> as do Bullinger and Dimitrijevic.<sup>9</sup> Van Dijk and van Hoof, discussing the issue within the European framework, also consistently use the term freedom of expression<sup>10</sup> while Strozzi, within both a universal and regional framework, consistently talks of the individual right to freedom of information which he thinks has gained a "conceptual autonomy" in relation to the freedom of opinion and expression and which, according to Strozzi, is closely related to the decisive importance of the mass media in today's society.<sup>11</sup> Freedom of information is indispensable for the full realization of freedom of expression, writes Strozzi.<sup>12</sup>

Strozzi makes an unusual distinction between freedom of expression and freedom of information. Freedom of expression, he says, being an outgrowth of the absolute freedom of opinion is wider than freedom of information.<sup>13</sup> "Personal judgements, interpretations, commentaries, even fallacious, deformed or partial, as manifestations of the subjective thought, are legitimate and every individual has a right to express them."<sup>14</sup> On the other hand, according to Strozzi, the very notion of in-

<sup>6</sup> Bullinger, "Freedom of Expression and Information: An Essential Element of Democracy", in *Council of Europe, Proceedings of the Sixth International Colloquy about the European Convention on Human Rights*, Seville, 13-16 November, 1985, p 140.

<sup>7</sup> Cf. Ioannou, *op.cit.* ch. 1.1.1 (n. 1), p 212.

<sup>8</sup> Cf. Partsch, "Freedom of Conscience and Expression, and Political Freedoms", in *The International Bill of Rights. The Covenant on Civil and Political Rights*, Ed. by Louis Henkin, 1981, pp 209-245.

<sup>9</sup> Cf. Dimitrijevic, "Freedom of Opinion and Expression", in *Human Rights in a Changing East/West Perspective*, 1990, pp 58-88.

<sup>10</sup> Cf. Van Dijk and van Hoof, *Theory and Practice of the European Convention of Human Rights*, 1990, pp 407-428.

<sup>11</sup> Cf. Strozzi, "Liberté de l'information et droit international", *RGDIP*, vol. 94, 1990, p 949.

<sup>12</sup> *Ibid.*, p 950.

<sup>13</sup> *Ibid.*, p 951.

<sup>14</sup> *Ibid.*

formation, which has a social function and serves a collective need, implies that information, events and facts presented be veridical, complete and objective.<sup>15</sup> “The right to inform freely cannot signify the right to lie, mislead or simply deform or manipulate objective facts, even more so since the transmitted message in itself claims to be ‘information.’”<sup>16</sup>

There are several problems with Strozzi’s distinction even if he is right when pointing to the predominantly individual character of freedom of expression and the more collective, mass medial, character of freedom of information. Firstly, according to the international human rights instruments, the freedom of information includes both “information” and “ideas” of which the latter cannot possibly be of the objective nature required by Strozzi. Secondly, the dividing line between the objective and subjective, between facts and opinions, is not as clear-cut as Strozzi seems to mean. Opinions held by journalists for example may influence, directly or indirectly, the supposedly objective information transmitted to the public through the mass media. Incidentally, the claim that news reports are often biased is a claim which has been frequently heard in the debate on a NWICO.<sup>17</sup> Strozzi’s distinction between the freedom of expression and the freedom of information does not seem meaningful.

Pinto uses freedom of information and freedom of expression interchangeably.<sup>18</sup> Cohen-Jonathan, finally, is of the opinion that freedom of the press, by way of freedom of expression and freedom of information has enlarged into freedom of communication.<sup>19</sup> Indirectly giving evidence of the significant role of the mass media in relation to the freedom of expression/information/communication (whatever one chooses to call it) of today, Cohen-Jonathan says concerning the European Convention that “the freedom of expression /.../ applies not only to the press organs but to all individuals” (and to all media of expression).<sup>20</sup> Cohen-Jonathan thus finds that he has to point out that the individual human right to freedom of expression also applies to individuals and not only to the mass media—as if the presumption was reversed in relation to

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> See further part 2.

<sup>18</sup> Cf. Pinto, *La liberté d’information et d’opinion en droit international*, 1984.

<sup>19</sup> Cf. Cohen-Jonathan, *La convention européenne des droits de l’homme*, 1989, pp 450–451.

<sup>20</sup> Ibid., p 450.

freedom of expression compared with the other human rights which all apply first of all to individuals.

Balle uses a terminology similar to Cohen-Jonathan's.<sup>21</sup> Balle adds, however, that the freedom of communication in his opinion is a subcategory of freedom of expression which implies the exercise of freedom of expression by means of a mass medium. This sounds exactly like the definition of freedom of information made by some of the authors cited earlier, but for some reason which remains unclear freedom of communication, according to Balle, is not equivalent to freedom of information.<sup>22</sup>

Malinverni writes that freedom of expression refers to the moment when opinions are expressed to someone else.<sup>23</sup> The same is true for the freedom to inform, Malinverni writes, which also refers to the external and active phase, i.e. the right to convey information.<sup>24</sup> The freedom to inform is usually not separated from the other components (to seek and receive) of freedom of information. If one separates the freedom to inform, one should in the name of consequence also separate the freedom to convey ideas, since freedom of information under the international human rights instruments also includes "ideas". The freedom to convey ideas would then be equivalent to Malinverni's conception of freedom of expression. Malinverni continues: "To describe the freedom which protects the process of communication as a whole, i.e. the right to be informed, to make up one's own mind /.../ and to express one's own opinion to someone else, the most suitable terms would seem to be freedom of information or freedom of communication."<sup>25</sup> Here Malinverni equates freedom of information with freedom of communication. He also seems to consider freedom of information to be the widest concept including freedom of expression, and freedom of opinion.

The freedom of communication of Cohen-Jonathan, Balle and Malinverni is probably not to be confused with the right to communicate called for in the debate on a NWICO. This new largely unspecified right to communicate is a so called third generation human right and incorp-

<sup>21</sup> Cf. Balle, *Médias et sociétés*, 1990, pp 233-242.

<sup>22</sup> Ibid.

<sup>23</sup> Cf. Malinverni, "Freedom of Information in the European Convention on Human Rights and in the International Covenant on Civil and Political Rights", 4 *HRLJ* 1983, p 446.

<sup>24</sup> Ibid., p 47.

<sup>25</sup> Ibid.

orates both individual and collective elements as well as both rights and responsibilities.

The conclusion to be drawn from the account of the use of terminology by different authors is that they often use different terms but mean or refer to the same thing and that there is no generally accepted definition either of freedom of expression or freedom of information. This causes no particular harm as long as terms are used reasonably consistently within each study. The international human rights commissions and courts generally use the term freedom of expression, in accordance with the traditional terminology.

To this author the term freedom of information seems most useful for different reasons. "Freedom of communication" is too vague and is not really established, either as a term or as regards its possibly different content compared with freedom of information, either in the literature or in the United Nations. The question which one of the freedoms of expression and information in reality encompasses the other is left open. In this study the activities of seeking, receiving and imparting information and ideas through any media are the central ones and they are protected by what will be labelled freedom of information. Other possible ways of exercising the freedom of expression will not be considered.

Since this study mainly deals with the activities of the mass media, and primarily in the field of news distribution,<sup>26</sup> freedom of information seems to be a useful concept also in that it, at least according to some other authors, has a particular mass medial character. Freedom of information is also the concept most widely used in the UN and Unesco debates on freedom of information and in the New World Information and Communication Order debate.

A term similar to freedom of information, namely the "free flow" of information will appear frequently in this study. The free flow of information which is not laid down as such in any human rights instrument could be understood as denoting the operational or mechanical aspects of communication as opposed to the qualitative or substantial. In reality, however, it is difficult to uphold a clear distinction between

<sup>26</sup> This study does not deal with the so called transborder data flow (TBDF), i.e. international transmission *inter alia* of scientific, commercial, personal or natural resource data. Partly the same legal issues arise in relation to international news transmission and international data transmission, however. Cf. Note, "Freedom of information versus national sovereignty: the need for a new global forum for the resolution of transborder data flow problems", *Fordham International Law Journal*, vol. 10, 1986-1987, pp 262-287.

these two aspects because a “free flow” of information practically never means a completely free flow of information, but in reality exception is always made, implicitly or explicitly, for certain categories of information, or ideas, i.e. exceptions based on the content of the information flow. Chen writes that the concern of freedom of information extends to the process as well as content of communication.<sup>27</sup> Another author, Raube-Wilson, instead talks of the individual “right to a free flow of information” as the designation of freedom and free flow of information together.<sup>28</sup> This is, however, an unusual use of the terminology.

This author will use both “freedom” and “free flow” of information interchangeably depending on the context and if any particular aspect of communication is meant to be emphasized by the choice of terminology this will be pointed out.

Before we go on to look at the actual instruments on freedom of information another comment should be made on terminology. Since questions relating to freedom of information have strong political components and the states involved in the debates on these questions have embraced highly divergent ideologies, political concepts on one hand play an important role in these debates but on the other hand are used in different senses depending on ideological standpoint. Central political concepts like democracy and freedom can therefore have diametrically opposed meanings depending on who is using them.<sup>29</sup> When this author uses the concept “democracy” it means a liberal multi-party parliamentary democracy and freedom means “bourgeois” freedoms exercised under the laws (“bourgeois” as opposed to Marxist-Leninist). This is presumed to be the ordinary meaning of these concepts. When they are used in a different sense by some parties to the information debate this will be pointed out to the extent that it is not obvious.

A final comment should also be made before we go on regarding the structure of this study. A division is made between the scope of freedom of information as such, which is dealt with in this chapter, and the limitations to which this freedom may lawfully be subjected, which are dealt with in the following chapter. This division is made primarily for

<sup>27</sup> Cf. Chen, “Human Rights and the Free Flow of Information”, in *Power and Policy in Quest of Law*, Ed. by Myres S. McDougal and W. Michael Reisman, 1985, p 261.

<sup>28</sup> Cf. Note, “The New Information and Communication Order and International Human Rights Law”, *Boston College International and Comparative Law Review*, vol. 9, 1986, pp 112–115.

<sup>29</sup> This problem is dealt with by Sussman, *Warning of a Bloodless Dialect: Glossary for International Communications*, 1983.

reasons of clarity. In reality the scope of freedom of information is determined both by what is allowed and by the restrictions which may be placed on the exercise of this freedom. The arbitrary division made here should not be interpreted as an argument against that fact.

## **1.2.2 The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights**

### *1.2.2.1 The Universal Declaration*

The Universal Declaration of Human Rights of 1948<sup>30</sup> lays down the human right to freedom of information in Article 19:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Thus everyone has the right to seek, receive and impart information and ideas through any media and, importantly, regardless of frontiers. There is a suggestion in Article 19 that the freedom of information is not as absolute as the freedom of opinion. In relation to freedom of opinion it is declared that this freedom is exercised “without interference”, but no similar guarantee is given in relation to the freedom of information. It seems as if the drafters envisaged the possibility and maybe even the necessity of some restrictions on, or “interference with”, the freedom of information. The basic presumption, however, is a free exercise of freedom of information; restriction is the exception to the fundamental rule of freedom.

The distinction between freedom of opinion which may not be interfered with and freedom of information which may, becomes somewhat blurred if one looks at Article 29 of the Universal Declaration. Article 29 constitutes a general limitation clause relating to all the rights and freedoms included in the Declaration. No exception is made in Article 29 for freedom of opinion which gives the impression that freedom of opinion *may* be interfered with. It is not evident from the records of the preliminary debates whether this apparent paradox was realized by those who negotiated the Universal Declaration. We shall return to Article 29 of the Universal Declaration in chapter 1.3.1.

<sup>30</sup> See *supra* ch. 1.1.3 (n. 49).

Any kinds of information and ideas may be sought received and imparted according to Article 19. This caused some debate during the preparation of the article. The Soviet bloc states strongly opposed the fact that any information and ideas in principle would be protected by Article 19. The Soviet Union had tried during the preparatory work in the Commission on Human Rights and the Third Committee of the General Assembly to have inserted an amendment into Article 19 prohibiting the propagation of fascism, acts of aggression and hatred between nations, but the amendment proposal was voted down.<sup>31</sup>

After the vote in the Third Committee, Pavlov, the Soviet delegate, said that through the proposed Soviet amendment freedom of opinion and expression would have been “subordinated to democratic principles”.<sup>32</sup> Mr Pavlov continued: “As it read, article 17 (which later became article 19, author’s note) would be interpreted as direct encouragement to the development of fascism and the propagation of aggression. It would permit Press agents to carry out harmful activities in the countries in which they were located and instead of strengthening international goodwill, would be used as a cover for war propaganda.”<sup>33</sup>

Demchenko of Ukraina, for his part, “had voted against article 17 because, instead of guaranteeing the basic rights of freedom of opinion and expression, it was inadequately drafted and would allow fascists and warmongers to continue their propaganda. That propaganda was being encouraged by certain Governments and the article, as it read, would permit interference in the internal affairs of sovereign States.”<sup>34</sup>

During the final discussion of Article 19 in the General Assembly the Soviet delegate Vyshinsky regretted that the Soviet amendment proposal had been rejected, “which would declare the inalienable right of every person freely to express and disseminate *democratic* views” (emphasis added).<sup>35</sup> The Soviet bloc discontent with Article 19 as well as other articles contained in the Universal Declaration, led the Soviet

<sup>31</sup> The text of the Soviet amendment proposals is found in UN, ESCOR, Doc. No. E/800, 28 June 1948, Report of the Third Session of the Commission on Human Rights, p 40. The future Article 19 was adopted in the Third Committee by 36 votes to 6.

<sup>32</sup> UN, GAOR, 3rd Sess., Part I, Social, Humanitarian and Cultural Questions, Third Committee, Summary Records of Meetings 21 September – 8 December, 1948, p 428.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid., pp 428–429. Cf. in ch. 2.2 how the national sovereignty argument reappeared in the debate on a NWICO.

<sup>35</sup> UN, GAOR, 3rd Sess., Part I, Plenary Meetings, Summary Records of Meetings 21 September – 12 December 1948, p 927.

bloc states (together with Saudi-Arabia and South Africa) to abstain at the final vote in the General Assembly.<sup>36</sup>

One argument against the Soviet amendment proposal that would prohibit the propagation of fascism was that it would be difficult to define fascism, which could lead to abuse of this possibility to restrict freedom of information. Vyshinsky dismissed this “pretext”, saying that “[i]t was a strange thing after the sufferings through which the world had just passed, that it should be necessary to define fascism.”<sup>37</sup>

During the debate in the Third Committee the Soviet delegate Pavlov had proposed the following definition, “the bloody dictatorship of the most reactionary section of capitalism and monopolies”, and had argued that the Yalta and Potsdam conferences had defined the meaning of the word.<sup>38</sup> To the definition given by the Soviet representative, France, who was more favourable to the Soviet proposal that Article 19 should prohibit the propagation of fascism, aggression and international hatred, through its delegate Grumbach “wished to oppose the following: “A totalitarian, one-party régime which excludes any participation of the opposition in the Government, all real freedom of opposition, and which employs censorship in times of peace”.<sup>39</sup> France did not, however, succeed in convincing the Soviet representative of the benefits of the French definition.

Another point on which a conflict of principle arose between the advocates and opponents of Article 19 was the question of ownership of the mass media and government interference in the freedom of information. The Soviet Union was of the opinion that “[i]f freedom of expression was to be effective, the workers must have the means of voicing their opinions and for that they must have at their disposal printing presses and newspapers.”<sup>40</sup> The Soviet Union had therefore also proposed an amendment to Article 19 to the effect that the state should guarantee “the workers the material means by which they could express themselves”, but that proposal had also been rejected “on the plea that it

<sup>36</sup> The result of the vote thereby became 48–0–8 (2 absent).

<sup>37</sup> UN, GAOR, 3rd Sess., Part I, Plenary Meetings, Summary Records of Meetings 21 September – 12 December 1948, p 856.

<sup>38</sup> UN, GAOR, 3rd Sess., Part I, Social, Humanitarian and Cultural Questions, Third Committee, Summary Records of Meetings 21 September – 8 December 1948, p 421.

<sup>39</sup> *Ibid.*, p 425.

<sup>40</sup> UN, GAOR, 3rd Sess., Part I, Plenary Meetings, Summary Records of Meetings 21 September – 12 December 1948, p 856.

might permit the State to restrict freedom of expression”.<sup>41</sup>

This illustrates a fundamental difference of opinion concerning the essence of freedom of expression/information; the Soviet Union was of the opinion that the more state interference there was the more freedom there would be, whereas most other countries at that time were of a diametrically opposite opinion—the more state interference, the less freedom. The Ukrainian delegate, Demchenko, claimed during the debate in the Third Committee that “[o]nly the participation of the Government in the activities of the Press could guarantee absolute freedom of expression” (emphasis added).<sup>42</sup>

Despite the strong opposition from the Soviet bloc the free seeking, receiving and imparting of information and ideas was not made dependent on state involvement in the activities of the press, nor was freedom of information qualified by reference to what information and ideas may and may not be “freely” disseminated.

The next passage of Article 19 after “freedom to seek, receive and impart information and ideas”—“through any media”—shows that freedom of information may be exercised by means of any conceivable medium and that all kinds of media are protected by Article 19. This passage also caused some fruitless opposition on the part of the Soviet bloc. The Ukrainian delegate, again, claimed that “the expression ‘through any media’ could be interpreted as meaning that any methods could be resorted to, including dishonest practices such as blackmail, calumny and intimidation, in order to receive and impart information and ideas.”<sup>43</sup> For this reason, the USSR delegation had also proposed an amendment to the effect that the methods for seeking and imparting information and ideas should be compatible with the requirements of national security and the Ukrainian delegation supported this amendment proposal.<sup>44</sup>

As has appeared from several of the above quoted Soviet bloc statements the question of national sovereignty was one of the most important disputed matters of principle in relation to Article 19. The Soviet bloc states attached relatively greater importance to the national sover-

<sup>41</sup> Ibid. For the text of the Soviet amendment proposals, see *supra* (n. 31).

<sup>42</sup> UN, GAOR, 3rd Sess., Part I, Social, Humanitarian and Cultural Questions, Third Committee, Summary Records of Meetings 21 September – 8 December 1948, p 418.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

eignty to which individual human rights were clearly subordinated whereas the Western and other states attached greater importance to human rights, if necessary at the expense of, or at least regardless of, the issue of national sovereignty.

Finally, freedom of information, according to Article 19, is exercised “regardless of frontiers”. It is exercised within countries as well as between countries which means in principle that information and ideas of any kind shall flow freely both inside and across national borders. This is a manifestation of the doctrine of a free flow of information,<sup>45</sup> a central aspect of the freedom of information becoming increasingly important the more the communications technology develops.<sup>46</sup> The demands for a NWICO relate to this aspect of the freedom of information in particular. It implies that states shall not obstruct the free flow of information and ideas either nationally or internationally, far-reaching protection indeed of the free flow of information, which of course is not always respected by the states.<sup>47</sup> As Dimitrijevic points out, however, the development of electronic media makes it less and less possible to prevent the international flow of information.<sup>48</sup>

During the final General Assembly debate concerning the Universal Declaration the Soviet delegate, Vyshinsky, dwelt at great length on the issue of national sovereignty which in his eyes had not been sufficiently protected in the Universal Declaration: “The USSR delegation had pointed out that a number of articles completely ignored the sovereign rights of democratic (sic!) Governments, moreover, that the draft contained provisions directly contradicting those of the Charter, which prohibited interference in the internal affairs of States.”<sup>49</sup> Vyshinsky’s reasoning on national sovereignty will be quoted extensively here because of its significance as evidence of the Soviet bloc attitude during almost the entire period of time covered by this study.

Vyshinsky continued: “A certain theory which had already been advanced by some Members at the previous session (the second session in 1947, author’s note) was now being upheld; it was the entirely false

<sup>45</sup> Cf. also the Constitution of Unesco of 1945, *supra* ch. 1.1.2 (n. 16) and UN Gen. Ass. res. 59 (I), of 14 December 1946.

<sup>46</sup> Cf. Dimitrijevic, *op. cit.* (n. 9), p 59.

<sup>47</sup> Cf. Strozzi, *op. cit.* (n. 11), pp 958–961.

<sup>48</sup> Cf. Dimitrijevic, *op. cit.* (n. 9), p 59.

<sup>49</sup> UN, GAOR, 3rd Sess., Part I, Plenary Meetings, Summary Records of Meetings 21 September – 12 December 1948, p 923.

theory that the principle of national sovereignty was a reactionary and out-dated idea, and that the repudiation of that principle was an essential condition of international co-operation. The draft declaration of human rights appeared to endorse that reactionary view directed against national sovereignty and was therefore entirely inconsistent with the principles of the United Nations. It was sometimes argued that the declaration of human rights should not touch on matters of *national* significance because it was devoted to the rights of *individual* human beings (emphasis added). It was impossible to agree with such a view, if only because human rights could not be conceived outside the State; the very concept of right and law was connected with that of the State. Human rights meant nothing unless they were guaranteed and protected by the State; otherwise they became a mere abstraction, an empty illusion easily created but just as easily dispelled.”<sup>50</sup>

The really reactionary position according to Vyshinsky was to attack the principle of national sovereignty.<sup>51</sup> The French representative had provocatively stated that “Hitler, too, had proclaimed absolute sovereignty”, something which had led to serious crimes against the human rights both of Germans and especially other peoples, but Vyshinsky did not find the comparison relevant.<sup>52</sup>

#### *1.2.2.2 The International Covenant on Civil and Political Rights*

After the Universal Declaration of Human Rights came the two International Covenants of 1966—one on Economic, Social and Cultural Rights and the other on Civil and Political Rights.<sup>53</sup> Article 19 paras. 1 and 2 of the Covenant on Civil and Political Rights states that:

“1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

<sup>50</sup> Ibid., pp 923–924.

<sup>51</sup> Ibid., p 924.

<sup>52</sup> Ibid.

<sup>53</sup> Both Covenants plus an Optional Protocol to the Covenant on Civil and Political Rights were adopted and opened for signature, ratification and accession by Gen. Ass. res. 2200 A (XXI), of 16 December 1966. The Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976 and the Covenant on Civil and Political Rights and the Optional Protocol to the Covenant entered into force on 23 March 1976.

Article 19 of the Covenant constitutes a somewhat developed and clarified version of Article 19 of the Universal Declaration. Concerning freedom of opinion in para. 1, which is only of indirect relevance to this study, it can be noted that the separation of this freedom from the freedom of expression or information emphasizes the fact that the freedom of opinion is absolute and cannot lawfully be limited in any way, whereas the freedom of information can.<sup>54</sup> The limitations introduced in para. 3 of Article 19 and in Article 20 will be dealt with in chapter 1.3.

Concerning who is intended by the word “everyone” in Article 19(2), the UN Conference on Freedom of Information of 1948, which was asked to express its opinions concerning the draft International Covenant (which later became two Covenants), stated that it was of the opinion that Article 19 “is intended to apply to the freedom of expression of individuals as well as to the freedom of media of information”.<sup>55</sup> The mass media companies as well as the individual citizens thus have the right to freedom of information.

In practice, most seeking and imparting of information and ideas take place through the mass media. Journalists exercise the freedom of information on the part of individual citizens and for their benefit. Generally individuals are only the receptors of information and ideas. The mass media perform an important function and help individuals to exercise, mostly indirectly, their freedom of information against governmental authorities. In the relationship between individuals and the also powerful mass media companies, however, there is no human right which can be invoked in order for example for an individual to have access to the newspaper pages.<sup>56</sup> Accordingly, there is no duty on the part of the mass media to let individuals or groups of individuals appear on the pages or on the screens, except in cases where the right of correction can be exercised.

The debates preceding the adoption of Article 19 followed the same lines as the ones before the adoption of the Universal Declaration and the view that freedom of expression/information should be confined to “democratic” views was upheld by the Soviet bloc countries with no less force.<sup>57</sup> The only difference, significant in itself, between the debates

<sup>54</sup> Cf. Partsch, *op.cit.* (n. 8), p 217; Dimitrijevic, *op.cit.* (n. 9), p 61.

<sup>55</sup> UN Yearbook on Human Rights for 1948, p 503.

<sup>56</sup> Here is where the proponents of the right to communicate want that right to be expressed.

<sup>57</sup> Cf. the Official Records of the debates in the Third Committee during the 16th Sess. of the UN  
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preceding the adoption of the Covenant and the ones preceding the Universal Declaration was that the parties to the debates in the case of the Covenant had become more numerous following the accession to independence of many developing countries. This fact did not, however, alter the basic conflicts of principle with regard to freedom of information.

In order to bring home the basic premise that no information or ideas are excluded from the freedom of information it is added in Article 19 of the Covenant that information and ideas “of all kinds” may freely be sought, received and imparted. Suggestions that the information and ideas in question should be defined and illustrated were rejected as creating a risk of restrictive interpretation.<sup>58</sup>

A slight alteration was also inserted in Article 19 of the Covenant concerning the media through which freedom of information may be exercised. Instead of “through any media” as in the Universal Declaration it is stated in Article 19 of the Covenant that freedom of information is exercised “either orally, in writing or in print, in the form of art, or through any other media of his choice”. This passage does not change the meaning of Article 19 of the Covenant in relation to that of the Universal Declaration, rather it emphasizes the fact that any medium may be used in the exercise of freedom of information.

The licensing of radio and television is not expressly mentioned in Article 19(2), whereas it is in the corresponding provision in the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>59</sup> It was feared that such a provision might threaten the exercise of freedom of expression through these media and that it might even be misconstrued as authorizing the licensing of the printed word.<sup>60</sup> Moreover, the licensing of radio and television stations for technical reasons would be permitted anyway under Article 19(3) for the protection of public order.

As in the Universal Declaration, it is stated in Article 19 of the Covenant that freedom of information is exercised “regardless of frontiers”.

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General Assembly in 1961. Article 19 of the future International Covenant on Civil and Political Rights was discussed during the 1071st to the 1078th meetings. The records of the preliminary debates carried out in the Commission on Human Rights are assembled in UN Doc. No. A/2929, Summary of the Discussions concerning the International Covenant on Civil and Political Rights in the Commission on Human Rights 1947–1954 (1 July 1955).

<sup>58</sup> Cf. Partsch, *op.cit.* (n. 8), p 218.

<sup>59</sup> ETS No. 5. The Convention was adopted in Rome on 4 November 1950 and entered into force on 3 September 1953.

<sup>60</sup> Cf. Partsch, *op.cit.* (n. 8), p 218.

Has freedom of information as conceived in Article 19 of the Universal Declaration and in Article 19 para. 2 of the Covenant on Civil and Political Rights developed into customary law? According to this author the answer is no.

Recently, however, with the end of the ideological struggle between East and West and with tendencies to democratization also in parts of the Third World at least, the international climate has become more favourable than before for the potential development of freedom of information into customary law. This is so because freedom of information is considered so central in democratic societies that it is not possible for a state to become democratic without actually respecting freedom of information. Consequently, if more and more states become democratic, freedom of information will necessarily be increasingly respected, and vice versa. Not absolutely all states have to respect freedom of information in their domestic practice in order for it to become a rule of customary international law.

Pinto is one of the few authors who consider freedom of information to have developed already into customary law.<sup>61</sup> He seems to reach this conclusion by means of a rather formal view of the practice necessary to create a customary rule. Pinto considers national constitutional protection of freedom of information in combination with the adoption of international resolutions, declarations and conventions on the subject to constitute sufficient practice. It is true that pronouncements made and instruments of different formal significance adopted at international fora may in fact constitute one kind of state practice contributing to the formation of a rule of customary law.<sup>62</sup> National legislation also constitutes practice that may be cited as evidence of the existence of a rule of customary international law.<sup>63</sup> "A very widespread and representative participation" in a convention may even "suffice of itself" in order for a conventional rule to become a rule of customary international law (provided the participation includes that of states whose interests are specially affected).<sup>64</sup>

<sup>61</sup> Cf. Pinto, *op. cit.* (n. 18), pp 25–51.

<sup>62</sup> Evident, *inter alia*, from the case concerning Military and Paramilitary Activities in and Against Nicaragua, *ICJ Reports*, 1986, pp 97–117, paras. 183–225. Cf. also Akehurst, "Custom as a Source of International Law", *BYIL*, vol. XLVII, 1974–75, pp 1–8.

<sup>63</sup> Cf. Akehurst, *ibid.*, pp 8–10. Cf. also Brownlie, *Principles of Public International Law*, 1990, p 5.

<sup>64</sup> Cf. the North Sea Continental Shelf cases, *ICJ Reports*, 1969, p 42, para. 73. Cf. also Akehurst, *ibid.*, pp 42–52.

It would seem as if freedom of information fulfils even the latter requisite thanks to the, after all, widespread and representative participation in the Covenant on Civil and Political Rights. However, if the discrepancy between the words of the international instruments, or of national constitutions for that matter, and the actual domestic practice of states is so great as it has been in the case, *inter alia*, of freedom of information in most parts of the world until recently, then it is doubtful whether Pinto's theory is tenable. In the view of this author the value of national legislation alone as evidence of the existence of a rule of customary law is small if a reasonable application of the law is obviously lacking. The upgrading of human rights generally, which has taken place lately in the minds of many leaders in the world, may have a positive effect on domestic practice and consequently on the development of freedom of information into customary law.

Sur, Strozzi and Raube-Wilson, among others, more realistically do not consider freedom of information to have developed into customary law.<sup>65</sup> Sur points out that even if some of the articles of the Universal Declaration have attained the status of customary law, this is not the case with freedom of information in the traditional sense, nor is it the case with most other individual human rights.<sup>66</sup> Sur also points out that, at the time of his article in 1981, the number of references to freedom of information had constantly declined in the resolutions of Unesco, which was the primary forum for debate on freedom of information at that time.<sup>67</sup> Sur, finally, says that even if all states officially adhered to the rule of "freedom of information", its content would still be highly equivocal and they probably would not mean the same thing by the term. Sur presumes with good reason that for those who demand a NWICO in the name of freedom of information this term probably has a meaning different from the classical liberal one.<sup>68</sup>

Strozzi also emphasizes the differences of opinions concerning the significance and scope of the actual concept of freedom of information when he rejects it as a rule of customary law.<sup>69</sup> Raube-Wilson simply,

<sup>65</sup> Sur, "Vers un nouvel ordre mondial de l'information et de la communication", *AFDI* XXVII, 1981, pp 55-56; Strozzi, *op.cit.* (n. 11), pp 966-968; Note, *op.cit.* (n. 28), p 113.

<sup>66</sup> Cf. Sur *ibid.* His choice of terminology may be noted in relation to what was said earlier about how different authors use "freedom of expression" and "freedom of information".

<sup>67</sup> *Ibid.*, p 56.

<sup>68</sup> *Ibid.*

<sup>69</sup> Cf. Strozzi, *op.cit.* (n. 11), pp 966-968.

but, in the view of this author, correctly, states that “[a]lthough most states adhere, to some degree, to the principle of free flow of information, domestic application of this principle varies widely. Because state practice is so inconsistent, free flow of information does not constitute a principle of customary international law.”<sup>70</sup>

One complication as concerns the potential development of freedom of information into customary law is that the reactions of other states—protests or acquiescence—cannot reasonably be considered as relevant for the determination of the existence of customary law in the human rights field as they are in other areas of international law.<sup>71</sup> States seldom protest officially against human rights violations occurring in other states, for example as concerns freedom of information. It would be wrong, however, to conclude from this that because of acquiescence, the surrounding world accepts and finds lawful the human rights violations. If acquiescence in the human rights context was interpreted in the way it normally is as regards the formation of customary law, it could rather be invoked in favour of a customary rule permitting violations of freedom of information. In the human rights field the importance attached to reactions of other states as a criterion of the existence of a customary law rule must accordingly be reduced for the benefit of other kinds of expressions of the attitudes of states, for example the adoption of different international instruments.

### **1.2.3 The European Convention on Human Rights**

The European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted by the members of the Council of Europe in 1950.<sup>72</sup> The European Convention thus is the oldest of the conventions on human rights and a comparatively efficient enforcement mechanism offers a comprehensive body of European case law.

This should make the European Convention and especially the construction of the European Convention by the Commission and the Court a reference point and source of inspiration for other organs, universal and regional, which apply other human rights conventions. Therefore,

<sup>70</sup> Note, *op.cit.* (n. 28), p 113. See also Kraemer, “Freer Expression or Greater Repression? UNESCO and the Licensing of Journalists”, *Communications and Entertainment Law Journal*, vol. 7, 1984, p 66.

<sup>71</sup> Cf. Akehurst, *op. cit.* (n. 62), pp 38–42.

<sup>72</sup> See *supra* (n. 59).

the significance of the European Convention, in the case of freedom of information for example, should extend far beyond Europe itself. Theoretically the European enforcement organs could also be inspired by the case law of other similar institutions, but since European case law itself is the most developed one it probably happens more often that other organs are inspired by European case law than vice versa.

Cross-fertilization regarding the application of the articles on freedom of information presupposes that the meaning of freedom of information is or should be the same in all conventions, universal and regional. This author considers it fair to make such a presumption, at least theoretically. One reason for this is that all human rights conventions basically share the same legal and ideological origin—the Universal Declaration of Human Rights—and that the same terminology is thereafter used in all conventions.

It is clear, however, that Europe is unique as to the cultural and political homogeneity of the region and as to the relative absence of political upheavals or violence. This makes it considerably easier to arrive at a commonly shared conception of freedom of information in Europe than elsewhere. The differences between Europe and the rest of the world in this respect, plus the obvious fact that cultures and political systems differ between different regions, can make it difficult to apply European concepts to the rest of the world, but the possibility of so doing is nevertheless presupposed in this study.

In practice, this presumption entails that what the European Commission and Court of Human Rights have said about the meaning of Article 10 of the European Convention is considered to be a valid interpretation also of the corresponding articles in the other human rights instruments treated here, if nothing else is explicitly pointed out. In consequence, the results of the application of the other instruments by other agencies are similarly considered to be relevant for the interpretation of the European Convention.

Article 10 para. 1 of the European Convention states that:

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

Unlike the Covenant on Civil and Political Rights the European Convention does not draw a sharp line between the freedom of opinion, which can never be restricted, and freedom of expression/information which can. Probably this is not, however, meant to enable European states to restrict the freedom of opinion.<sup>73</sup>

"Everyone" clearly means both individuals and media enterprises. This is expressed in a Declaration on Mass Communication Media of 1970 adopted by the Consultative Assembly of the Council of Europe.<sup>74</sup> In this Declaration it is stated that ".../ 2. The right to freedom of expression shall apply to mass communication media." Cohen-Jonathan as we have seen above has also clearly said that freedom of expression/information applies to the mass media as well as to individuals.<sup>75</sup> Not only mass media companies in the ordinary sense of the term may invoke the freedom of expression/information. The European Commission of Human Rights stated in *X and the Church of Scientology v. Sweden* that Article 10 para. 1 of the European Convention "through its reference to 'enterprises', foresees that a non-governmental organisation like the applicant church is capable of having and exercising the right to freedom of expression".<sup>76</sup>

Unlike Article 19 of the Covenant on Civil and Political Rights, Article 10 of the European Convention only talks of freedom to "receive and impart" information and not to "seek".<sup>77</sup> The active seeking of information on the part of the mass media and of the general public is not always popular among public authorities. Freedom to seek information was deliberately left out of the text of Article 10 because of the fears of the member states of a corresponding far-reaching duty on their part to provide information, which might include classified information.<sup>78</sup>

<sup>73</sup> Cf. the *Lingens* judgment of 8 July 1986, Series A No. 103, para. 46.

<sup>74</sup> Council of Europe. Consultative Assembly, 21st ordinary session, res. 428 of 23 January 1970.

<sup>75</sup> Cf. Cohen-Jonathan, *op.cit.* (n. 19), p. 450.

<sup>76</sup> *X and the Church of Scientology v. Sweden*, Application No. 7805/77, decision of 5 May 1979, DR, vol. 16, (p. 68), p. 70. See also Eur. Court H.R., *Autronic AG* judgment of 22 May 1990, Series A No. 178, para. 47.

<sup>77</sup> For a comparative study of this element of freedom of information in national legislations, see Poncet, "La liberté d'information du journaliste: Un droit fondamental? Etude de droits suisse et comparé", *Revue internationale de droit comparé*, 32ème année, No. 4, Octobre-Décembre, 1980, pp. 731-756.

<sup>78</sup> Van Dijk and van Hoof write that Article 19 of the International Covenant constitutes a stronger basis for an obligation on the part of the authorities to provide information than Article 10 does thanks to the express mention of the right "to seek" information in Article 19. They cite the Report of the Committee of Experts to the Committee of Ministers of the Council of Europe, "Problems arising

It has remained uncertain to what extent the freedom to seek—and the duty on the part of the authorities to provide—information can be regarded as implicitly included in Article 10 of the European Convention. Most authors although legitimately uncertain are of the opinion that the freedom to seek information must reasonably be included in the freedom of information of Article 10, and also think that the European Commission and Court show signs of this conviction as well.<sup>79</sup> As Pinto says, “how in fact would it be possible to receive and impart information and ideas if the public authorities might legally obstruct the free search thereof: suppressing information and ideas is obviously equivalent to paralyzing the right to receive and impart information and ideas.”<sup>80</sup>

In the previously cited Declaration on Mass Communication Media and Human Rights of 1970, the Consultative Assembly of the Council of Europe states concerning “the right to freedom of expression” that “3. This right shall include freedom to seek, receive, impart, publish and distribute information and ideas. There shall be a corresponding duty for the public authorities to make available information on matters of public interest within reasonable limits and a duty for mass communication media to give complete and general information on public affairs.”<sup>81</sup> In 1981 the Committee of Ministers adopted a Recommendation to Member States on Access to Information Held by Public Authorities stating, *inter alia*, that everyone shall have the right to obtain, on request, information held by public authorities other than legislative bodies and judicial authorities (principle I).<sup>82</sup> This right is subject to a number of restrictions, however (principle V). Among the preambular considerations to the enumerated principles is “the importance for the public in a democratic society of adequate information on public issues”, something to which we shall return.

In 1982 the Committee of Ministers likewise adopted a Declaration

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from the co-existence of the United Nations Covenants on Human Rights and the European Convention on Human Rights, Differences as regards the Rights Guaranteed”, H(70)7 September 1970, however, which says that not even under Article 19 of the International Covenant is it a duty on the part of the authorities to provide information implied in the right “to seek” information, but, as van Dijk and van Hoof write, it is not stated what then is the content of this additional obligation.

<sup>79</sup> Cf. Malinverni, *op. cit.* (n. 23), pp 448–451; Pinto, *op. cit.* (n. 18), pp 96–99; Bullinger, *op. cit.* (n. 6), pp 66–70; Cohen-Jonathan, 1989, *op. cit.* (n. 19), p 451; Dimitrijevic, *op. cit.* (n. 9), p 63; Strozzi, *op. cit.* (n. 11), pp 974–977; Van Dijk and van Hoof, *op. cit.* (n. 10), pp 417–418.

<sup>80</sup> Pinto, *ibid.*, p 96.

<sup>81</sup> See *supra* (n. 74).

<sup>82</sup> Recommendation 19, of 25 November 1981.

on the Freedom of Expression and Information confirming, among other things, the right to seek information.<sup>83</sup> In the Leander and Gaskin cases the European Court of Human Rights has accepted the refusal on the part of Sweden and the United Kingdom respectively to let individuals have access to confidential information about themselves.<sup>84</sup> In the Leander case the Court stated that "Article 10 does not /.../ confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual."<sup>85</sup>

Concerning the freedom to receive information and ideas, the European Court of Human Rights made it clear in *The Sunday Times Case* that Article 10 guarantees not only the freedom of the press to inform the public but also *the right of the public to be properly informed*.<sup>86</sup> It is incumbent on the mass media to impart information and ideas concerning matters of public interest, the Court says, and the public also has a right to receive such information and ideas.<sup>87</sup> In the previously cited Declaration of 1970 on Mass Communication Media and Human Rights, para. 3, it is even stated that there exists "a *duty* for mass communication media to give complete and general information on public affairs" (emphasis added).<sup>88</sup>

Both *The Sunday Times case* and the Declaration of 1970 thus underline the great importance of the mass media when it comes to providing the general public with information on matters of public interest.<sup>89</sup> Indirectly the dangers of restricting the activities of the mass media are underlined at the same time.

<sup>83</sup> Adopted by the Committee of Ministers on 29 April 1982.

<sup>84</sup> Eur. Court H.R., Leander judgment of 26 March 1987, Series A No. 116; Gaskin judgment of 7 July 1989, Series A No. 160.

<sup>85</sup> Leander case, *ibid.*, para. 74.

<sup>86</sup> Eur. Court H.R., *The Sunday Times* judgment of 26 April 1979, Series A No. 30, para. 66. Cf. also Barthold judgment of 25 March 1985, Series A No. 90.

<sup>87</sup> *The Sunday Times* judgment, *ibid.*, para. 65. In the Inter-American context, cf. the Schmidt case below ch. 1.3.4, OAS, Annual Report of the Inter-American Court of Human Rights 1985. OEA/Ser.L/V/III.12, doc. 13, August 15, 1985, Advisory opinion OC-5/85 of November 13, 1985, pp 19-65.

<sup>88</sup> Cf. *supra* (n. 74). Cf. Strozzi, *op.cit.* (n. 11), p 951 who emphasizes the task of the mass media to inform the public in a complete and objective manner.

<sup>89</sup> Trudel criticizes the alleged right to receive information which he finds illusory as long as the mass media companies can freely decide what information to impart and what not to impart (cf. Trudel, "Réflexion pour une approche critique de la notion de droit à l'information en droit international", *Les Cahiers de Droit*, vol. 23, décembre 1982, pp 847-871).

The European Convention on Transfrontier Television of 1989 includes an article on "Access of the public to major events", Article 9, buttressing the right of the public to be informed via television concerning matters of public interest.<sup>90</sup> The member states are supposed to "examine the legal measures to avoid the right of the public to information being undermined due to the exercise by a broadcaster of exclusive rights for the transmission or retransmission /.../ of an event of high public interest."

The freedom to receive information has been qualified by the European Court to embrace only "information that others wish or may be willing to impart".<sup>91</sup> Thus the freedom to receive information does not include confidential information which the public authorities are not willing to impart (cf. above).

The passage "information and ideas" is used in the European Convention without the clarifying "of all kinds" of Article 19 para. 2 of the Covenant on Civil and Political Rights. The significance is certainly however the same. The European Commission and Court has on several occasions laid down the importance of pluralism of opinions in a democratic society (here democratic in the Western European liberal sense). In the *Handyside* case the Court made the well-known statement that: "Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10,<sup>92</sup> it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any other sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'".<sup>93</sup>

<sup>90</sup> ETS No. 132, adopted on 5 May 1989. It has not yet entered into force. A corresponding European Communities Council Directive concerning the Pursuit of Television Broadcasting Activities has also been adopted (89/552, 3 October 1989, Official Journal, No. L 298, p 23). See also Hondius, "Regulating Transfrontier Television—The Strasbourg Option", *Yearbook of European Law*, vol. 8, 1988, pp 141–169.

<sup>91</sup> Cf. *Leander* judgment, *supra* (n. 84), para. 74; *Gaskin* judgment, *supra* (n. 84), para. 52.

<sup>92</sup> See further ch. 1.3.3.

<sup>93</sup> Eur. Court H.R., *Handyside* judgment of 7 December 1976, Series A No. 24, para. 49. This position was reaffirmed in *The Sunday Times* judgment, *supra* (n. 86), para. 65, and in the *Lingens* judgment, *supra* (n. 73), para. 41. Concerning the importance of pluralism for freedom of information on a general level cf. Strozzi, *op.cit.* (n. 11), p 952.

The Lingens case<sup>94</sup> shows that the degree of protection granted by Article 10 of the European Convention is different depending on the category of information concerned. For example, as the Court stated in the Lingens case, the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. This is because of the importance of freedom of political debate, which is “at the very core of the concept of a democratic society.”<sup>95</sup> The Commission stated in the same case that it is not only a right but may be considered a “duty and responsibility” (cf. Article 10(2)) of the press in a democratic state to exercise close control of those who hold public power.<sup>96</sup>

The Commission and Court have also emphasized the relative superiority of “political speech”, in a broad sense, in relation to so called “commercial speech”, which is protected but not as strongly as “political speech”.<sup>97</sup> This is effected by means of a less rigorous test of whether any potential restrictions on the freedom of commercial expression are “necessary in a democratic society” under Article 10(2).<sup>98</sup>

Another interesting distinction was made by the Court in the Lingens case, i.e. the one between facts and value-judgments. The expression of value-judgments, “ideas”, seems to enjoy a higher degree of protection than the expression of mere facts. The central reason for this according to the Lingens judgment, which related to the Austrian law on defamation, is that the existence of facts can be proved whereas the truth of value-judgments is not susceptible of proof.<sup>99</sup> A requirement that value-judgments have to be proved is impossible of fulfilment and, according to the Court, it infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 of the Convention.<sup>100</sup> This statement also seems to confirm the presumption that the

<sup>94</sup> Cf., *ibid.*

<sup>95</sup> Lingens judgment, *ibid.*, para. 42. The wider limits for legitimate criticism in political debates was invoked unsuccessfully in the Barford case, concerning the alleged impartiality of the High Court of Greenland, Eur. Court. H.R., judgment of 22 February 1989, Series A No. 149.

<sup>96</sup> Report of 11 October 1984, para. 74, annexed to the Lingens judgment, *ibid.*

<sup>97</sup> First laid down by the Commission in *X and Church of Scientology v. Sweden*, see *supra* (n. 76). Confirmed by the Court in the Barthold judgment of 25 March 1985, *supra* (n. 86); *Markt intern Verlag GmbH and Klaus Beerman* judgment of 26 November 1989, Series A No. 165.

<sup>98</sup> *X and Church of Scientology v. Sweden*, *ibid.*, p 73; cf. below ch. 1.3.3.

<sup>99</sup> Lingens case, *supra* (n. 73), para. 46. Cf. also the Oberschlick judgment of 23 May 1991, Series A No. 204, where the circumstances were as good as identical with the ones in the Lingens case, including the allegedly erring state party and where the result was the same.

<sup>100</sup> Lingens judgment, *ibid.*

protection of freedom of opinion is absolute also in the case of the European Convention.

If the primacy of “political speech” is combined with the primacy of value-judgments—in combination with the view that “freedom of political debate is at the very core of the concept of a democratic society”<sup>101</sup>—it would seem as if political ideas is the category of “information and ideas” which enjoys the highest degree of protection according to the European Convention.

Connected with the issue of pluralism are the issues of media concentration, forms of media ownership or control and the question whether individual citizens can claim access to the mass media.

Many observers are concerned with the excessive concentrations in the mass media field.<sup>102</sup> The Committee of Ministers of the Council of Europe in 1974 adopted a resolution on press concentrations containing examples of measures which the member states were recommended to take in order to promote diversity in this field.<sup>103</sup> Usually the concerns regard private concentrations but there has also been considerable public media concentration in Eastern Europe and the Soviet Union for example which is pointed out by Dimitrijevic.<sup>104</sup>

Cohen-Jonathan among others emphasizes that a passive stand on the part of the state in relation to mass media concentration is not sufficient. The state must take active measures in order to ensure the diversity of the media, writes Cohen-Jonathan.<sup>105</sup> He invokes the case of *De Geïllustreerde Pers. N.V. v. the Netherlands* where the European Commission indicated in an *obiter dictum* that a problem no doubt could arise under Article 10 of the Convention if “a State fails in its duty to protect against excessive press concentrations.”<sup>106</sup> The Commission stated further in this case that it is the right of individual consumers to

<sup>101</sup> Ibid., para. 42.

<sup>102</sup> Cf. for instance Cohen-Jonathan, op.cit. (n. 19), p 453; Dimitrijevic, op.cit. (n. 9), pp 82–86; Strozzi, op.cit. (n. 11), pp 957–958.

<sup>103</sup> Res. 43 adopted on 16 December 1974. See also recommendation 747 of the Consultative Assembly of the Council of Europe adopted on 23 January 1975.

<sup>104</sup> Dimitrijevic, op.cit. (n. 9), pp 82–84. Cf. also UN ESCOR, 16th Sess., Suppl. No. 12, Freedom of Information, supra ch. 1.1.2 (n. 10), pp 30–34.

<sup>105</sup> Cf. Cohen-Jonathan, op.cit. (n. 19), p 453; Malinverni, op.cit. (n. 23), pp 451–452. On a superficial level, the attitude of Cohen-Jonathan is reminiscent of the attitude of the Soviet delegates to the debates on Article 19 of the Universal Declaration of Human Rights who emphasized the importance of active state involvement in the mass media field. Cf. ch. 1.2.2.1 pp 47–48

<sup>106</sup> Cf. Cohen-Jonathan, ibid.; *De Geïllustreerde Pers N.V. v. The Netherlands*, report 6 July 1976, DR, vol. 8, p (5) 14.

pluralist information which is central to the freedom of information and not the commercial interests of publishers.<sup>107</sup>

Van Dijk and van Hoof do not seem to be as convinced as Cohen-Jonathan of the existence of a duty on the part of the state, according to Article 10 of the European Convention, actively to ensure media pluralism.<sup>108</sup> They also criticize the Commission for automatically subordinating the publishers' right to impart information to the general public's right to receive pluralist information.<sup>109</sup> Their doubts as to the duty of the state to ensure media pluralism are based on a literal reading of Article 10 which only says that freedom of information is exercised "without interference by public authority" and does not say anything about any active duties on the part of the public authorities.<sup>110</sup> Van Dijk and van Hoof add by way of precaution, however, that "the text leaves sufficient scope for developments in legal thinking on this matter."<sup>111</sup>

The fact that the passage "without interference by *public authority*" was inserted in Article 10 of the European Convention, whereas Article 19(1) of the Covenant on Civil and Political Rights only states "without interference" probably does not have any independent significance for the exercise of freedom of information. The point of not limiting the undesired interference to public authorities was that individuals should have the right to freedom of opinion without interference by private parties as well, and not only by public authorities.<sup>112</sup> Thus, the danger that the state might encourage such interference from private or so-called private sources would be eliminated.<sup>113</sup> Maybe the drafters of the European Convention wanted to emphasize what must still have been implicit in the Covenant, namely that the central relationship as far as human rights are concerned is the one between the state or the public authorities and the individual citizens, that it is against the state that the individuals shall be protected above all and not for example against "trusts, monopolies and capitalist enterprises in general".<sup>114</sup>

<sup>107</sup> De Geïllustreerde Pers N.V. v. The Netherlands, *ibid.*, pp 13–14.

<sup>108</sup> Cf. Van Dijk and van Hoof, *op.cit.* (n. 10), p 418.

<sup>109</sup> *Ibid.*, pp 414–415.

<sup>110</sup> *Ibid.*, p 418.

<sup>111</sup> *Ibid.*

<sup>112</sup> Cf. Partsch, *op.cit.* (n. 8), p 218.

<sup>113</sup> *Ibid.*

<sup>114</sup> The Ukrainian delegate during the debate on Article 19 of the Universal Declaration on Human Rights; GAOR, 3rd Sess., Part I, Social, Humanitarian and Cultural Questions, Third Committee,

Nevertheless Cohen-Jonathan is of the opinion that the quoted statement of the European Commission concerning the duty of the state to counteract excessive press concentrations<sup>115</sup> shows that the European Convention contains articles which not only protect the individual against interferences by the state but which also oblige the latter to protect the rights of the individual even against the acts of other individuals.<sup>116</sup> If Cohen-Jonathan is right in his “activist” interpretation of the European Convention a consequence would be that states could legitimately interfere in the exercise of the freedom to impart information of the mass media companies as long as the interference, in the form of anti-trust legislation for example, served the superior goal of freedom of the individuals to receive pluralist information.<sup>117</sup>

The highly valued pluralism in relation to freedom of information has not led the European organs to state anything to the effect that pluralism presupposes any particular form of ownership or organization of the media. As Pinto writes: “The principle of freedom does not address itself directly to the organizational structures of information. Neither public appropriation nor private appropriation can in itself guarantee the principle of freedom.”<sup>118</sup> In fact the Commission has on several occasions declared that it is not contrary to the European Convention to have national radio broadcasting and television services organized in the form of a state monopoly.<sup>119</sup>

Van Dijk and van Hoof, again, criticize this position of the European Commission: “One may indeed wonder whether such an ‘interference by public authority’, by which the receipt of information from independent sources is cut off completely or substantially with respect to a given medium, although it does not seem to conflict with the text of Article 10 /.../ does not in fact greatly conflict with the spirit of this

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Summary Records of Meetings, 21 September – 8 December 1948, p 418. Cf. also Cohen-Jonathan, *op.cit.* (n. 19), p 480.

<sup>115</sup> See *supra* (n. 106).

<sup>116</sup> Cf. Cohen-Jonathan, *op. cit.* (n. 19), pp 453–454.

<sup>117</sup> *Ibid.*, pp 458–459.

<sup>118</sup> Pinto, *op.cit.* (n. 18), p 48.

<sup>119</sup> Cf. X against Sweden, Application No. 3071/67, decision of 7 February 1968, YECHR, vol. XI, 1968, p 456; X against the United Kingdom, Application No. 4750/71, decision of 20 March 1972, Collection of decisions, vol. 40, 1972, p 29; Sacchi v. Italy, Application No. 6452/74, decision of 12 March 1976, DR, vol. 5, p 43. Cf. also X v. the United Kingdom, Application No. 8266/78, decision of 4 December 1978, DR, vol. 16, p 190, where the Commission, however, avoids the major issue of state broadcasting monopoly.

article.”<sup>120</sup> Van Dijk and van Hoof note, however, that the Commission in the case of *Sacchi v. Italy* stated concerning public television monopolies that it “would not now be prepared purely and simply to maintain this point of view without further consideration.”<sup>121</sup>

Cohen-Jonathan also notices this statement of the Commission but quotes Pinto as regards the most probable interpretation of the position of the Commission and this author agrees: “Whatever the organization chosen, State monopoly, exclusive concession to one public or private firm, competition, it should guarantee the respect of the freedom of expression”,<sup>122</sup> and the pluralism of information Cohen-Jonathan adds.<sup>123</sup>

Malinverni is of the opinion that a textual interpretation of Article 10 clearly points in the direction of a prohibition of state broadcasting monopolies.<sup>124</sup> Malinverni makes an interesting point, however, concerning the meaning of the word “enterprises” in the last passage of Article 10 para. 1 allowing states to require “the licensing of broadcasting, television or cinema enterprises”. He cites other “legal authors” who have contended that the Convention referred only to national enterprises to the exclusion of local radio stations which would not be covered by this provision.<sup>125</sup> It can in fact be argued, Malinverni writes, that the special economic and technical situation liable to justify setting up a monopoly for national broadcasting is less perceptible for local broadcasting.<sup>126</sup> It is probably for this reason, according to Malinverni, that in its decision in the *Sacchi v. Italy* case, the European Commission stated that despite its earlier decisions it would be prepared to reconsider whether monopolies are consistent with the Convention.<sup>127</sup>

Thus, in Malinverni’s view it is likely that a state monopoly on national broadcasting does not constitute a violation of the European Convention whereas a state monopoly on local broadcasting does.

In either case, it can be noted that at the time when the Commission laid down the permission of state broadcasting monopolies, and at the

<sup>120</sup> Van Dijk and van Hoof, *op.cit.* (n. 10), p 419.

<sup>121</sup> Cf. van Dijk and van Hoof, *ibid.*; *Sacchi v. Italy*, *supra* (n. 119), p 50.

<sup>122</sup> Pinto, *op.cit.* (n. 18), p 220.

<sup>123</sup> Cohen-Jonathan, *op.cit.* (n. 19), p 458.

<sup>124</sup> Cf. Malinverni, *op.cit.* (n. 23), pp 457–458.

<sup>125</sup> *Ibid.*, p 459.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

time when the Convention was concluded, a great number of member states did in fact have a system of public monopoly and the Commission expressly took this into consideration when it found that the term "licensing" in Article 10 para. 1 could not be understood as excluding a public radio and television monopoly as such.<sup>128</sup> Since fewer and fewer states have kept their broadcasting monopoly systems, the cited reason of the Commission for endorsing them has correspondingly weakened. This applies both to national and to local broadcasting.<sup>129</sup>

In *X v. the United Kingdom* regarding radio pirates, the Commission stated that restrictive measures against such pirates can be justified with reference to "the prevention of crime" in para. 2 of Article 10.<sup>130</sup> It seems as if the Commission avoided the fundamental issue in this case, namely whether the law buttressing the British broadcasting monopoly by prohibiting pirate radio stations as such was legitimate under the European Convention. In a later case the Commission explained: "/.../ since a State may enact legislation requiring the licensing of broadcast enterprises, it must also be legitimate for that State to enact legislation which ensures compliance with the licence in question, in particular by preventing means of circumventing the conditions stated in the licence."<sup>131</sup>

Another rule which emerges clearly from the practice of the European Commission is that the freedom to impart information and ideas included in the right to freedom of expression under Article 10 cannot be taken to include a "general and unfettered right" for any private citizen or organization to have access to broadcasting time on radio or television in order to forward its opinion.<sup>132</sup> This rule is no doubt *mutatis mutandis* applicable also to the printed media. The Commission adds, however, that the denial of broadcasting time to one or more specific groups or persons may, in particular circumstances, raise an issue under Article 10 alone or in conjunction with Article 14 on non-discrimination.<sup>133</sup>

<sup>128</sup> *X* against Sweden, Application No. 3071/67, *supra* (n. 119), pp 462–464.

<sup>129</sup> Cf. Eur. Court H.R., *Groppera Radio AG and Others* judgment of 28 March 1990, Series A No. 173, para. 60.

<sup>130</sup> Application No. 8266/78, *supra* (n. 119), p 190.

<sup>131</sup> *Radio X, S, W, A v. Switzerland*, Application No. 10799/84, decision of 17 May 1984, DR, vol. 37, p (236), p 240.

<sup>132</sup> *X and the Association of Z against the United Kingdom*, Application No. 4515/70, decision of 12 July 1971, Collection of decisions, vol. 38, (p 86), p 88; *X Association v. Sweden*, Application No. 9297/81, decision of 1 March 1982, DR, vol. 28, p 204.

<sup>133</sup> *X and the Association of Z against the United Kingdom*, Application No. 4515/70, *ibid*.

The lack of "general and unfettered" access to the mass media could to some extent be counterbalanced by a right of correction or reply. No such right is expressly included in the European Convention, however.<sup>134</sup> The question whether freedom of expression implies the right of reply or correction has not yet been clarified according to Van Dijk and van Hoof.<sup>135</sup>

The Committee of Ministers of the European Council in 1974 adopted a resolution recommending the member states to adopt national legislation establishing a right of reply for the individual (or rather for "all natural and legal persons as well as other bodies irrespective of nationality or residence, with the exclusion of the State and other public authorities") in relation to the mass media.<sup>136</sup> The same principles concerning the right to reply should apply to all media without any distinction. Annexed to the resolution are a set of minimum rules on which member governments are recommended to base their legislation. The Committee of Ministers seems to place the right of reply side by side with the right of correction since it says in para. 1 of the proposed minimum rules that the right of reply is exercised "in order to correct facts", and later that the right to reply may be refused if the reply "is not limited to a correction of the facts challenged".

Pinto, using a slightly different terminology, writes that there exist two conceptions of the right to reply. One implies a right which is general and absolute. The other is relative and allows corrections only as a means of defence against an attack. In the French legal system there exists a right to reply of the absolute character.<sup>137</sup> Pinto writes, however, that the French experience of the right to reply through the years has not been encouraging; people very seldom make use of their right to reply. Pinto nevertheless thinks that the right of reply plays a preventive role. Pinto furthermore is of the opinion that the above cited Declaration of 1974 should incite the European Commission to look favourably upon complaints under Article 10 from individuals who have been refused their right of reply.<sup>138</sup>

<sup>134</sup> Cf. ch. 1.1.3 pp 29–30 and ch. 1.2.5 pp 77–79.

<sup>135</sup> Cf. Van Dijk and van Hoof, *op.cit.* (n. 10), pp 412–413.

<sup>136</sup> Res. 26 on the Right of Reply—Position of the Individual in Relation to the Press, plus appendix, adopted on 2 July 1974. On "Le projet européen de droit de réponse" see Pinto, *op.cit.* (n. 18), pp 181–184.

<sup>137</sup> Cf. Pinto, *ibid.*, p 182.

<sup>138</sup> *Ibid.*, pp 183–184.

Malinverni for his part writes that it is doubtful whether Article 10—saying in para. 2 that the freedom of expression (of the mass media in this case) may be restricted for the protection of the reputation of others (those who want to reply)—is a sufficient basis for a right of reply.<sup>139</sup> He thinks that Article 8 on the right to privacy would be a more appropriate basis. The steps taken by the Council of Europe, Malinverni writes and cites the Declaration of 1974, suggest that a right of reply is not included, even implicitly, in Article 10.<sup>140</sup>

In the European Convention on Transfrontier Television and the corresponding European Communities Council Directive, the right of reply of “every natural or legal person” is provided for in Article 8 and 23 respectively.<sup>141</sup>

The possibility of states to require the licensing of broadcasting, television or cinema enterprises according to Article 10 para. 1 has also given rise to the question whether, since the licensing is mentioned in para. 1 of the Article, the media which may lawfully be licensed are subject to more stringent rules than other media whose exercise of freedom of information may only be restricted in accordance with the strict requirements of Article 10(2).<sup>142</sup> The European Commission stated in *X* and the Association of *Z* against the United Kingdom that the notion of licensing implies that, in granting a licence the state may subject radio and television broadcasting to “certain regulations”.<sup>143</sup> In the case of *X* Association v. Sweden the Commission said that the provision allowing licensing does of course imply that for practical reasons the freedom to receive and impart information and ideas will be of a more limited scope in a state which requires licensing of radio and television.<sup>144</sup> “It should however be noted that a State which establishes a system requiring licensing has special duties to ensure that the rights under Article 10 of the Convention remain protected.”<sup>145</sup>

Cohen-Jonathan is of the opinion that one should not isolate the licensing passage of Article 10 para. 1 from the rest of the Article. It

<sup>139</sup> Cf. Malinverni, *op.cit.* (n. 23), p 448.

<sup>140</sup> *Ibid.*

<sup>141</sup> See *supra* (n. 90).

<sup>142</sup> See further ch. 1.3.3.

<sup>143</sup> Application No. 4515/70, *supra* (n. 132), p 89.

<sup>144</sup> Application No. 9297/81, *supra* (n. 132), p 205.

<sup>145</sup> *Ibid.*

should only be possible, irrespective of medium, to limit the freedom of expression in accordance with the requirements laid down in para. 2 of Article 10, writes Cohen-Jonathan.<sup>146</sup> Van Dijk and van Hoof, on the other hand, find that it must be assumed that when refusing a licence to a mass media enterprise, the authorities are not confined to the restriction grounds mentioned in the second paragraph of Article 10, although the refusal will have to meet the requirements of reasonableness and non-discrimination.<sup>147</sup> One special restriction on the freedom of information of the licensed media which the Commission has fully endorsed is the prohibition of advertising.<sup>148</sup> At some point the "certain regulations" of licensed media envisaged by the Commission in X and the Association of Z against the United Kingdom would reasonably collide with the requirements of Article 10 para. 2, however.

Cohen-Jonathan makes the sensible reflection that the strong position generally of the idea of freedom of expression today, the various national practices in this direction, the affirmation of the right to pluralist information and the technical development in the audio-visual field together tend to make the licensing passage of Article 10 para. 1 less important than previously or at least tend to interpret the licensing rule in the context of Article 10 as a whole.<sup>149</sup> Thus the development would be a move away from the restrictive practice of the Commission with regard to audiovisual media. Cohen-Jonathan also cites the preparatory works of the European Convention which give evidence of the fact that it was above all for practical reasons that a licensing system was considered and that the reason was not to deprive the licensed enterprises from the guarantees of Article 10 para. 2 as regards the permitted limitations of freedom of expression.<sup>150</sup>

According to Article 10 of the European Convention, as in the case of the Universal Declaration and the Covenant on Civil and Political Rights, freedom of information is exercised "regardless of frontiers". This aspect of freedom of information was reaffirmed "avec force" in the above-mentioned Declaration on the Freedom of Expression and In-

<sup>146</sup> Cf. Cohen-Jonathan, *op.cit.* (n. 19), p 458.

<sup>147</sup> Cf. van Dijk and van Hoof, *op.cit.* (n. 10), p 419.

<sup>148</sup> X and the Association of Z against the United Kingdom, Application No. 4515/70, *supra* (n. 132).

<sup>149</sup> Cf. Cohen-Jonathan, *op.cit.* (n. 19), p 456.

<sup>150</sup> *Ibid.*, p 457. See also Eur. Court H.R., *Groppera judgment*, *supra* (n. 129), paras. 60–61, 64.

formation of the Council of Europe of 1982.<sup>151</sup> This applies to all the aspects of freedom of information—to seek (to the extent it is included in the European Convention), receive, and impart information and ideas—and to all kinds of media. It implies basically that governments shall not obstruct the free flow of information into or out of their countries. The primary aspect of this international freedom of information is the obligation of the state, subject to exceptions according to Article 10 para. 2, to refrain from hindering the free reception of information from abroad.<sup>152</sup>

Cohen-Jonathan points out that the freedom to seek information (the inclusion of which in the European Convention he does not question) regardless of frontiers presupposes that foreign journalists have appropriate working conditions (freedom of movement, of contact and free transmission of news) and above all that they are not punished or even expelled because of the legitimate exercise of their professional activities.<sup>153</sup>

The purpose of the above-mentioned European Convention on Transfrontier Television<sup>154</sup> according to its Chapter I Article 1 is “to facilitate, among the Parties, the transfrontier transmission and the retransmission of television programme services”. Article 4 of the Convention states that “[t]he Parties shall ensure freedom of expression and information in accordance with Article 10 of the [European Convention] and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention.” The Convention provides a number of guidelines for the activities of broadcasters, primarily concerning “advertising”—divergent rules on this subject heretofore having been an obstacle to transfrontier television<sup>155</sup>—and “sponsorship” but also concerning “programming matters”. The programme services shall not contain pornography, give undue prominence to violence or be likely to incite to racial hatred, for example.<sup>156</sup> The broadcasters, further, shall

<sup>151</sup> Cf. Cohen-Jonathan, *op.cit.* (n. 19), p 453. For the Declaration, see (n. 83).

<sup>152</sup> Cf. Cohen-Jonathan, *ibid.*, pp 454–455; van Dijk and van Hoof, *op.cit.* (n. 10), p 419. The freedom to receive television broadcasts from abroad was affirmed by the European Court of Human Rights in the *Autronic AG* case, see (n. 76).

<sup>153</sup> Cf. Cohen-Jonathan, *op.cit.* (n. 19), p 454, n. 19.

<sup>154</sup> See *supra* (n. 90).

<sup>155</sup> Cf. Cohen-Jonathan, *op.cit.* (n. 19), p 455.

<sup>156</sup> Chapter II Article 7 para. 1 a. and b..

ensure that news fairly presents facts and events and encourages the free formation of opinions.<sup>157</sup>

An interesting aspect of the Convention is Article 10 "Cultural Objectives" according to which broadcasters shall "reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and tele-text services." In the European Communities Council Directive the emphasis on the promotion of European programmes is even more pronounced. This promotes the transfrontier flow of European works at the cost of non-European (read: American) origin. These measures could be, and are, by the US, interpreted as protectionist restrictions on the global free flow of information.

#### **1.2.4 The Conference on Security and Co-operation in Europe (CSCE)**

Other European instruments which are not binding but still of considerable importance, *inter alia*, for freedom of information are the Final Act of the Conference on Security and Co-operation in Europe of 1975 and the final documents from the subsequent follow-up conferences.<sup>158</sup>

Since the Soviet Union, the United States and Canada participated in the Helsinki Conference, one could claim, like Pinto, that the Helsinki Final Act should belong to the category of universal rather than regional instruments.<sup>159</sup> Considering that the participating states together make up almost the whole industrialized world and represent the overwhelming part of the world's collected power, in different respects, the significance of the Helsinki Final Act, and of the subsequent so called Helsinki Process, is no doubt universal in the true sense of the word. Also it is primarily the participation of the non-European and only partly European super-powers which makes the Helsinki Final Act as significant as it is. Nevertheless this author has chosen mainly for geographical

<sup>157</sup> Ibid. para. 3.

<sup>158</sup> The Helsinki Final Act was adopted on 1 August 1975, 14 ILM 1292. In its evaluation of the legal value of the Helsinki Final Act, the Swedish delegation to the Belgrade follow-up conference made the assessment that, whereas on the one hand the Final Act is not a legally binding document, on the other hand a kind of sanction procedure has been installed through the provisions for a follow-up process, during which joint scrutiny of the measures taken in different countries can be carried out (cf. *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], Ny serie II:35, Konferensen om säkerhet och samarbete i Europa (ESK), uppföljningsmötet i Belgrad 1977, p 29).

<sup>159</sup> Cf. Pinto, op.cit. (n. 18), p 34.

reasons to treat the Helsinki Process among the regional instruments.

In the Helsinki Final Act, the participating states pledge their "[r]espect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief" in Principle No. VII of the declared ten "Principles Guiding Relations between Participating States".

Principle VII refers to the purposes and principles of the Charter of the United Nations and the Universal Declaration and essentially confirms previous undertakings by the participating states in the field of human rights: "They will ... fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound" (the United States has signed but not ratified the Covenants).<sup>160</sup>

In the part of the Final Act entitled "Co-operation in Humanitarian and Other Fields", the so called Third Basket, "Information" is treated under a separate heading. Here the participating states, among other things, "[m]ake it their aim to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries, and to improve the conditions under which journalists from one participating State exercise their profession in another participating State".

After this statement of principles and goals in the field of information three particular areas are singled out for practical measures: (a) Improvement of the Circulation of, Access to, and Exchange of Information; (b) Co-operation in the Field of Information; and, finally, (c) Improvement of Working Conditions for Journalists.

The Helsinki Final Act and the Helsinki Process solely relate to the situation in Europe and, consequently, to the East-West conflict, or more recently the relationship between East and West. Until the end of the 1980s the Western participants propagated vigorously in favour of human rights within the Helsinki framework and strongly criticized the situation in Eastern Europe and the Soviet Union on this account. The Soviet Union for its part made some human rights concessions at the Helsinki Conference, preceding the Final Act, in exchange, so to say, for the Western acceptance of the division of Europe. During the years

<sup>160</sup> Concerning the issue of human rights in the Helsinki process generally, see *Human Rights, International Law and the Helsinki Accord*, Ed. by Thomas Buergenthal, 1977; Buergenthal, "The Copenhagen CSCE Meeting: A New Public Order for Europe", 11 *HRLJ* 1990, pp 217-246.

that followed, however, the Soviet Union and the Eastern European countries held out against the Western demands for greater respect for human rights. Since the end of the Cold War both sides have finally joined in the recognition of the importance of human rights and fundamental freedoms. This is bound to augment the effectiveness of the provisions of the Final Act and subsequent documents.

Following the Helsinki Conference 1973–1975 (the actual negotiations took place in Geneva), freedom of information and the international free flow of information have been much debated at several follow-up conferences and other types of meetings which have subsequently been organized.<sup>161</sup>

During the Madrid follow-up conference (1980–1983) the Western bloc demands for a freer international exchange of information and a relaxation in the working conditions of journalists (primarily foreign correspondents) were met by Eastern “counter-demands” for the establishment of an international responsibility on the part of the mass media and on the part of the state for the content of the imparted information.<sup>162</sup> The Eastern bloc countries also claimed that any potential improvements or relaxations could only apply to such information as was “true” and “contributed to peace and to increased international confidence”.<sup>163</sup> These arguments are reminiscent of the ones used during the debates preceding the adoption of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

At the Vienna follow-up conference (1986–1989) the beginning of the liberalization process in the Soviet Union and Eastern Europe could be noticed and great advances were made in the field of human rights.<sup>164</sup> Two areas were given most attention during the negotiations

<sup>161</sup> Concerning freedom of information during the heated period until and including the Madrid follow-up conference, see Crouzatier, “D’Helsinki à Madrid: La Circulation des Personnes et des Informations en Europe”, *RGDIP*, vol. LXXXIV, 1980, pp 752–793; Lendvai, *The Bureaucracy of Truth. How Communist Governments Manage the News*, 1981, pp 209–253.

<sup>162</sup> Cf. *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], Ny serie II:41, Konferensen om säkerhet och samarbete i Europa (ESK), uppföljningsmötet i Madrid 1980–1983, p 38. Cf. also Wiewiórowska, “The Problem of States’ Responsibility in International Law for the Activities of Mass Media”, *Polish Yearbook of International Law*, vol. XI, 1981–1982, pp 141–154.

<sup>163</sup> *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], *ibid*.

<sup>164</sup> Cf. Malanczuk, “Freedom of Information and Communication—Recent Developments in the Helsinki Process (Conference on Security and Co-operation in Europe)”, *Hague Yearbook of International Law*, vol. 3, pp 98–102. Cf. also the assessment of the results of the Vienna Meeting of the Swedish delegation, *Aktstycken utgivna av utrikesdepartementet*, [Documents published by

concerning the Third Basket: human contacts and information.<sup>165</sup> Concerning freedom of information it was agreed, *inter alia*, that the participating states should not jam foreign radio broadcasts and that they should not expel journalists because of the content of the journalists' reports or the reports of their information media.<sup>166</sup> The right of individuals to obtain, possess, reproduce and distribute information material of all kinds was also confirmed.<sup>167</sup> An important new supervisory mechanism was instituted within the newly invented "Human Dimension" of the Helsinki Process enabling any participating state to bring up any human rights issue with any other participating state at any time.<sup>168</sup> Furthermore, a conference on the Human Dimension of the CSCE, "in order to achieve further progress concerning respect for all human rights and fundamental freedoms, human contacts and other issues of a related humanitarian character", was agreed upon. It was decided that this conference should hold, and has held, three meetings before the CSCE follow-up conference in Helsinki in March 1992.<sup>169</sup>

In Vienna too, another breakthrough of fundamental interest took place in the human rights discussions. It was only exceptionally at this meeting that the Soviet bloc countries invoked the argument that criticism of the human rights conditions in other states constitutes unlawful interference in the internal affairs of these states. At that point the then Soviet Union, Poland and Hungary had completely abandoned that standpoint so often heard before in the CSCE debates.<sup>170</sup>

In April and May 1989 a CSCE meeting was held in London precisely on the subject of freedom of information, the Information Forum. The summoning of the Information Forum indicates the importance attached to questions relating to freedom of information by the states participating in the Helsinki Process. It became evident during the dis-

the Swedish Ministry for Foreign Affairs], Ny serie II:44, Konferensen om säkerhet och samarbete i Europa (ESK), uppföljningsmötet i Wien 1986-1989, pp 26, 65.

<sup>165</sup> Cf. the official account of the Swedish delegation, *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], *ibid.*, p 57.

<sup>166</sup> Concluding Document of the Vienna Meeting 1986, "Co-operation in Humanitarian and Other Fields", paras. 34 and 39 respectively, *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], *ibid.*, pp 136-138.

<sup>167</sup> *Ibid.*, para. 34, pp 136-138.

<sup>168</sup> *Ibid.*, p 148.

<sup>169</sup> *Ibid.*, pp 148-150. The meetings on the Human Dimension took place in Paris in 1989, Copenhagen in 1990 and Moscow in 1991.

<sup>170</sup> Cf. the official account of the Swedish delegation, *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], *supra* (n. 164), p 27.

cussions that the position of the Soviet Union and of some of the Eastern European countries (with the exception of Romania, the GDR and Czechoslovakia) had changed considerably in favour of freedom of information.<sup>171</sup>

The Information Forum did not result in any official concluding document or report. The purpose of the Forum was to produce concrete proposals which could form the basis for discussion of "Information" (cf. above) at the Helsinki follow-up conference.

More recently the very important Paris Summit was held, in Paris, in the autumn of 1990. It was the second Summit meeting in the history of the Helsinki Process, the first being the one at which the Helsinki Final Act itself was signed. One author says of the Paris Summit that if one tries to find a place for the Paris Summit in history, which many commentators did at the time, "one could say that it comes nearest to a substitute for the peace conference *manquée* with Germany after World War II", because it sealed the unification of Germany, and at the same time the end of the entire Cold War era.<sup>172</sup> The document adopted in Paris is called the Charter of Paris For a New Europe.<sup>173</sup>

The most important part of the Paris Charter both in general and for freedom of information is the first section of its first chapter entitled "Human Rights, Democracy and the Rule of Law". In this section the basic tenets of democracy and human rights are formulated and in such a solemn way that it is reminiscent of President Roosevelt's Four Freedoms or the Atlantic Charter, both of 1941.<sup>174</sup> It shows the great weight henceforth attached by the two formerly opposed sides to democracy, whose character is *inter alia* described as "pluralist" and the importance of human rights. This common conviction will no doubt spill over, and has already spilt over, to the field of national and international freedom of information.

The Charter of Paris also stands out from the preceding Final Acts and Documents in that through the Charter steps are taken for the first

<sup>171</sup> Cf. article in *Dagens Nyheter*, 10 June 1989, p 4, "Ny öppenhet förenar öst och väst", [New openness brings east and west together], written by one of the Swedish delegates at the Information Forum, Eva Ekselius.

<sup>172</sup> Cf. Roth, "The CSCE 'Charter of Paris for a New Europe'. A New Chapter in the Helsinki Process", 11 *HRLJ* 1990, p 374. See also Schlager, "The Procedural Framework of the CSCE: From the Helsinki Consultations to the Paris Charter, 1972-1990", 12 *HRLJ* 1991, pp 221-237.

<sup>173</sup> 30 *ILM* 190.

<sup>174</sup> Cf. Roth, *op.cit.* (n. 172), p 376; Roosevelt's Four Freedoms, see *supra* ch. 1.1.2 (n. 14); the Atlantic Charter, of 14 August 1941, 204 *LNTS* 381.

time to institutionalize the CSCE. The third chapter of the Charter is accordingly entitled "New Structures and Institutions of the CSCE Process". On the subject of the North-South relation the Paris Charter is also unique in that it is the first CSCE document where the states involved express an understanding for about and responsibility towards the Third World. The measures taken to institutionalize the CSCE and the Human Dimension of the CSCE were further developed at the Helsinki follow-up conference of 1992.

### 1.2.5 The American Convention on Human Rights

Apart from the European Convention there exist two other regional conventions on human rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights.<sup>175</sup> Both instruments include provisions protecting freedom of information. "Freedom of thought and expression" is protected in Article 13 of the American Convention which states:

"1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

The wording of this paragraph is as good as identical with paragraph 2 of Article 19 of the Covenant on Civil and Political Rights.<sup>176</sup> It can be noted that freedom of opinion has been translated into freedom of thought in the American Convention. It can also be noted that freedom of thought and freedom of expression have not been separated, in contradistinction to Article 19 of the Covenant, but are treated side by side in the same paragraph. This is probably not, however, supposed to imply that freedom of thought is not an absolute right according to the American Convention. The significance of Article 13 para. 1 of the

<sup>175</sup> The American Convention on Human Rights was adopted by the OAS on 22 November 1969, and entered into force on 18 July 1978, 9 ILM 673; The African Charter on Human and Peoples' Rights was adopted by the OAU on 27 June 1981, and entered into force on 21 October 1986, 21 ILM 58. Concerning Arab and Asian efforts in the human rights field see for example Boutros-Ghali, "The League of Arab States", in *The International Dimensions of Human Rights*, vol. 2, Ed. by Karel Vasak, 1982, pp 575-581; Yamane, "Asia and Human Rights", *ibid.*, pp 651-670; Khushalani, "Human Rights in Asia and Africa", 4 *HRLJ* 1983, 403-442; Muntarhorn, "Current Challenges of Human Rights in Asia", in *Human Rights and Foreign Policy*, Ed. by Dilys M. Hill, 1989, pp 180-200. Although efforts have been made during the 1980s within the League of Arab States there exists as yet no Arab Charter on Human Rights.

<sup>176</sup> Cf. above (n. 53).

American Convention is the same as Article 19 paras. 1 and 2 of the Covenant and as Article 10 para. 1 of the European Convention.

On the whole the drafters of the American Convention of 1969, were greatly influenced by the European Convention of 1950 and learnt from the experiences generated by the application of this Convention.<sup>177</sup> In some instances the result of these impressions and experiences was that the drafters of the American Convention went even further than their European colleagues in the protection of human rights. Robertson points out, however, that the definitions of the rights used in the American Convention are generally closer to those of the Covenant on Civil and Political Rights than to the European Convention.<sup>178</sup>

The three improvements upon the "European model" cited by Robertson are: the obligatory right of individual petition to the Inter-American Commission of Human Rights, the power of the Inter-American Court of Human Rights to order remedial measures when appropriate, and the much wider competence of the Inter-American Court to give advisory opinions.<sup>179</sup> The obligatory right of individual petition, i.e. the fact that recognition of the right of individuals to launch complaints is not optional to the states ratifying the convention, is considered by Robertson to be "probably the most important advance enshrined in the American Convention."<sup>180</sup> Generally, states find it less embarrassing to be accused of human rights violations by individuals than by other states.

In the American Convention there is also, as we have seen,<sup>181</sup> an article on the right of reply, Article 14:

"1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or make a correction using the same communication outlet, under such conditions as the law may establish."

It is further stated that the "correction or reply shall not in any case remit other legal liabilities that may have been incurred" (para. 2), and that for the "effective protection of honour and reputation", every mass

<sup>177</sup> Cf. Robertson, "The American Convention on Human Rights and the European Convention: A Comparative Study", *Annuaire Européen*, vol. 29, 1981, pp 52, 56, 75.

<sup>178</sup> *Ibid.*, p 56.

<sup>179</sup> *Ibid.*, p 75.

<sup>180</sup> *Ibid.*, p 64.

<sup>181</sup> Cf. ch. 1.1.3 p 30.

media enterprise "shall have a person responsible, who is not protected by immunities or special privileges" (para. 3).

The right of reply may be regarded as an expansion of the freedom of information for the benefit of individual citizens who if "injured by inaccurate or offensive statements", are entitled to impart their own version of events by means of "the same communication outlet" and thus reach just as large an audience as was reached by the "inaccurate or offensive" message. The right of reply also augments the pluralism of opinions which is a central purpose of freedom of information. The institution of a right of reply does constitute an interference in the freedom of information of the mass media, but this interference can probably be justified with reference to the "respect for the rights or reputations of others" (Article 13 para. 2 a. of the American Convention) or, as Malinverni said concerning the European Convention, with reference to the right to privacy (Article 11 of the American Convention).<sup>182</sup>

The Inter-American Court of Human Rights has produced an advisory opinion concerning the "Enforceability of the right of reply or correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights)".<sup>183</sup> This advisory opinion concerns above all the interpretation of Articles 1(1) and 2, and, in relation to Article 14, the interpretation of the word "law" in Article 14 para. 1 *in fine* (".../ under such conditions as the law may establish"). Accordingly, the Court does not really examine the substantive content or signification of the "right of reply or correction".

The Inter-American Commission has also considered the issue of the right of reply.<sup>184</sup> The case concerned a former member of the then Sandinista Government in Nicaragua who had been accused in an article in the *Soberania* magazine of receiving money from the US Central Intelligence Agency (CIA). The applicant had attempted to reply but the magazine refused to publish his reply, nor would it retract its "offensive and inaccurate statements".<sup>185</sup> The applicant initiated a suit for malicious defamation which got stuck in the Nicaraguan court system. In the end

<sup>182</sup> Cf. Malinverni, *op.cit.* (n. 23), p 448.

<sup>183</sup> OAS, Annual Report of the Inter-American Court of Human Rights 1986, OEA/Ser.L/III.15, Doc. 13, 29 August 1986, Appendix VI, Advisory Opinion OC-7/85 of August 29, 1986, pp 49-90.

<sup>184</sup> OAS, Annual Report of the Inter-American Commission of Human Rights 1985-1986, OEA/Ser. L/V/II.68, doc. 8, rev. 1, 26 September 1986, res. No. 29/86, case No. 9102, Nicaragua, April 16, 1986, pp 57-98.

<sup>185</sup> *Ibid.*, p 63.

the Commission did not try this case in relation to Article 14 but declared, curiously, that the Government of Nicaragua had violated the applicant's right to humane treatment, and in particular his right to respect for his moral integrity, upheld in Article 5 of the American Convention, captioned "Freedom from torture". The violation on the part of the Nicaraguan Government consisted of "acts that first permitted a charge that Mr Macias had received money /.../ and then prevented him from defending himself through the Nicaraguan court system and in the media."<sup>186</sup> This appears to be also a violation of Article 14.

An interesting aspect of this case is that the Nicaraguan government was held responsible for the actions of the *Soberania* magazine although no legal relationship existed between them, as pointed out by the Commission.<sup>187</sup> However, "the actions of the Government enabled the magazine to make the accusation, since the control that the government exercises over the press under the current state-of-emergency powers means that it is impossible to publish news, opinions or commentary that have not had the express approval of the government."<sup>188</sup> The state-of-emergency was presumably also the reason why the Commission invoked Article 5 from which, in contrast to Article 13 and 14, no derogation is permissible.

## 1.2.6 The African Charter of Human and Peoples' Rights

The African Charter of Human and Peoples' Rights also protects the freedom of information albeit in a more rudimentary manner than the European and American Conventions.<sup>189</sup> According to Article 9 of the African Charter:

"1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law."

<sup>186</sup> Ibid., p 98.

<sup>187</sup> Ibid., p 96.

<sup>188</sup> Ibid.

<sup>189</sup> For a general comparison between the European Convention and the African Charter, see e.g. Note, "Regional Human Rights Models in Europe and Africa: A Comparison", *Syracuse Journal of International Law and Commerce*, vol. 10, 1983, pp 135-168. For a comparison of the African Charter with both the European and American Conventions, see Okere, "The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems", *HRQ*, vol. 6, 1984, pp 141-159.

Judging from the wording of this article the protection afforded freedom of information under the African Charter is not at all as strong as under the American or European Conventions, or under the Covenant on Civil and Political Rights. Although all off-springs of the same Universal Declaration of Human Rights, Article 9 of the African Charter, indeed the Charter as a whole, seems to be founded on partly different ideals than the liberal ones which inspired the other agreements. Complete freedom of information does not even seem to be an ideal worth striving for under the African Charter.

Gittleman writes that freedom of information has been a very sensitive issue in Africa.<sup>190</sup> Okere writes that in traditional Africa, freedom of expression is a fundamental right, but that political intolerance has put this freedom in jeopardy.<sup>191</sup> "The press is government-owned and echoes sentiments favorable to the government or is otherwise emasculated. Doubtful of their political legitimacy and apprehensive of their political stability, the leaders of these one-party states are jittery and hypersensitive to criticism."<sup>192</sup> Bello agrees that the right to receive and communicate information is fundamental in traditional African civilization, but that this is no longer the case in modern Africa.<sup>193</sup> Concerning the situation in Commonwealth Africa in particular, Howard writes that unlike the Western world, "where a chief limitation on the freedom of the press is its control by oligopolistic capitalist interests",<sup>194</sup> the major limitations on press freedom in Commonwealth Africa come from actions of the government: "censorship, harassment of individual editors and reporters, and state takeovers of organs of the press."<sup>195</sup> According to the president of the Union of African Journalists in 1988, the African press is undernourished and over-controlled.<sup>196</sup>

The relative downgrading of individual human rights in favour of collective peoples' rights—and individual duties—also has a weakening

<sup>190</sup> Cf. Gittleman, "The African Charter on Human and Peoples' Rights: A Legal Analysis", *Virginia Journal of International Law*, vol. 22, 1982, p 695.

<sup>191</sup> Cf. Okere, *op.cit.* (n. 189), p 146.

<sup>192</sup> *Ibid.*, pp 146–147.

<sup>193</sup> Cf. Bello, "The African Charter on Human and Peoples' Rights. A Legal Analysis", *RCADI*, vol. 194, 1985:5, pp 158–160. To the extent that the African states become multi-party democracies this situation may change.

<sup>194</sup> Cf. the concerns with concentrations in the mass media field mentioned above ch. 1.2.3 pp 62–64.

<sup>195</sup> Howard, *Human Rights in Commonwealth Africa*, 1986, p 120.

<sup>196</sup> Galal, "The Press in Africa Today", Conference on the Occasion of the 25th Anniversary of the O.A.U., Cairo, 25–28 January, 1988, Doc. No. F.A.OAU/Cairo 88/PL7, unpublished paper, p 4.

effect on the freedom of information just as it has on the other individual human rights included in the African Charter.<sup>197</sup> One reason for the inclusion of collective rights in the African Charter is that in addition to the objective of internal democratization of African societies—which it shares *mutatis mutandis* with the other human rights agreements—the African Charter also has the objective of African liberation vis-à-vis the rest of the world.<sup>198</sup>

The formulation “every individual” instead of “everyone” in Article 9 para. 1 and, in particular, para. 2, can give the impression that it is indeed only individual citizens who may exercise freedom of information and not, for example, mass media enterprises. This is probably, however, a wrong impression.

The right to receive information is laid down first. Intentionally or unintentionally this corresponds with the heavy emphasis that the European judiciary organs have put on the right of citizens to receive information concerning issues of public importance.<sup>199</sup> In the European context at least the individuals receive this information largely through the mass media. In para. 1 nothing is said about opinions (or ideas as the term reads in the other human rights agreements).

In para. 2 of Article 9 the right to express and disseminate one’s opinions is declared. Here on the other hand nothing is said about information. Significantly, in neither paragraph is it stated that the rights are exercised “regardless of frontiers”. Except for statements made in private conversations and in letters, in the European context opinions are generally expressed and especially disseminated through the mass media. The mass media must be comparatively important disseminators of opinions in Africa too, although the mass media in Africa have not reached the same level of development and power as in Europe.

The fact that the right of every individual to receive information is stated in para. 1 may possibly be taken as an indirect recognition also of the right of every individual to disseminate information, since if no information is disseminated there is none to receive. If this construction is correct the term “opinions” in para. 2 could be understood as also

<sup>197</sup> For a thorough investigation of the concept of “people” in the African Charter, see Kiwanuka, “The Meaning of ‘People’ in the African Charter on Human and Peoples’ Rights”, *AJIL*, vol. 82, 1988, pp 80–101.

<sup>198</sup> Kodjo, “The African Charter on Human and Peoples’ Rights”, 11 *HRLJ* 1990, p 274.

<sup>199</sup> Cf. for example *The Sunday Times case*, *supra* (n. 86).

including "information". Whether the unconditional right to receive information according to para. 1 by a similar line of reasoning—the right to express and disseminate opinions is meaningless if the right of individuals to receive these opinions is lacking—could be construed as including opinions is also not clear. It seems less likely, however, that para. 1 should include "opinions" than that para. 2 should include "information". The reason for this is the comparatively greater political importance of opinions than information. This is, on the other hand, one of the reasons why the European organs have been particularly anxious to protect the expression and reception of opinions or "ideas".<sup>200</sup> In Africa the governments do not seem to accept and even less want a lively and critical exchange of political opinions and for this reason it seems unlikely that they would have intended to promote such an exchange through the African Charter. The impression given by Article 9 is quite the opposite.

The right to seek information is moreover not mentioned in Article 9. That Article 9 could be interpreted as implicitly including a right to seek information is even more unlikely than was the case with the potential rights to disseminate information and receive opinions discussed above, at least with the intentions of the signatory states as a point of departure.

Whether the African Commission on Human and Peoples' Rights will have the authority and strength to expand the individual freedom of information through an extensive interpretation of Article 9 and then be able to make the party states accept an extensive interpretation remains to be seen. The African Commission—there is no African Court of Human Rights—is less independent in relation to the states party to the Charter and to the political organs of the Organization of African Unity (OAU) in comparison with the Commission's European and American counterparts. Nor is the competence of the African Commission as far-reaching as that of the European and American Commissions.<sup>201</sup> Also, the African Charter with its accompanying institutional structures did not enter into force until 1986 so the Commission has not had much time to establish any practice or to consolidate its position vis-à-vis the member states.

<sup>200</sup> Cf. for example the Lingens case, op.cit. (n. 73).

<sup>201</sup> Cf. Bello, "The Mandate of the African Commission on Human and Peoples' Rights", *The African Journal of International Law*, vol. 1, 1988, pp 31–64; cf. also Kodjo, op.cit. (n. 198), p 280.

The right to express and disseminate one's opinions according to para. 2 is subjected to a very important qualification. This right is exercised "within the law" which does indeed seem to give the governments a *carte blanche* to enact any legislation they want including very restrictive laws.<sup>202</sup> The right to receive information is not qualified in this way. No criteria are given concerning what kinds of restrictions which may be introduced or for what purposes. This leaves a large "margin of appreciation", as the European judiciary organs say, to the party states when they enact national legislation implementing the Charter provisions.

In fact para. 2 of Article 9, if looked upon critically, declares nothing more than that individuals shall have the right to express and disseminate opinions to the extent their governments allow. Article 9 para. 2 thus gives no extra protection outside the protection offered by the respective governments which probably vary considerably. Gittleman argues that the effect of this clawback clause may even be to foster the enactment of restrictive laws by the individual states, in contrast to what one would think would be the purpose of rules protecting freedom of information.<sup>203</sup> Perhaps the formulation of restrictions on freedom of information in the form of laws, reducing the element of arbitrariness, is nonetheless an improvement for the citizens of African states.<sup>204</sup>

The drafters of the African Charter were careful to emphasize that the Charter should be characterized by African values and African historical tradition.<sup>205</sup> In the preamble of the Charter this is manifested in the following formulation: "Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights /.../".

Article 60 of the African Charter prescribes that the African Com-

<sup>202</sup> Higgins calls this kind of derogation clause "clawback" clauses. By this she means a clause that permits, "in normal circumstances, breach of an obligation for a specified number of public reasons." Derogation clauses, in the strict sense of the term, are those which allow suspension or breach of certain obligations in circumstances of war or public emergency (see Higgins, "Derogations under Human Rights Treaties", *BYIL*, vol. 48, 1976-1977, p 281). Cf. also Bondzie-Simpson, "A Critique of the African Charter on Human and Peoples' Rights", *Howard Law Journal*, vol. 31, 1988, pp 660-661; Gittleman, op.cit. (n. 190), pp 695-696.

<sup>203</sup> Gittleman, *ibid*.

<sup>204</sup> Cf. Kodjo, op.cit. (n. 198), p 278, who writes that the emergence of the notion of the rule of law is one of the fundamental aspects of the Charter.

<sup>205</sup> For a critical commentary on the idea of a homogeneous "African culture", see Bondzie-Simpson, op. cit. (n. 202), pp 654-656.

mission on Human and Peoples' Rights, in construing the Charter, shall draw inspiration not only from the provisions of various African instruments of human and peoples' rights, the Charter of the OAU and other instruments adopted by African countries in the field of human and peoples' rights but also, and importantly, from the Charter of the UN, the Universal Declaration of Human Rights and other pertinent instruments adopted by the UN and its specialized agencies.

This statement in Article 60 may perhaps contribute to a relative strengthening of the rights contained in Article 9 of the African Charter since the instruments of the UN attach greater importance to the freedom of expression and information than does the African Charter. Furthermore, a number of African states have ratified the Covenant on Civil and Political Rights and are consequently bound by its comparatively more generous provisions on freedom of information.

The African Commission may receive communications both from states, under Article 47, and from others, "other communications", under Article 55. It can be noted that the right of individual petition is hereby made obligatory also under the African Charter. According to the Activity Reports of the Commission issued so far communications do occur and are considered by the Commission.<sup>206</sup> The contents of the communications or the decisions of the Commission have not, however, been disclosed. According to Article 59 of the African Charter all measures taken by the African Commission with respect to communications "shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide." Thus the publication of the findings of the Commission is dependent on the will of the political assembly of the OAU.

Because of the apparent implementation problems in relation to the African Charter, Kodjo, who was the Secretary-General of OAU when the Charter was created, interestingly encourages foreign intervention by states and non-governmental entities for the promotion of human rights, in the form of political support to those who struggle for democracy in Africa.<sup>207</sup> He also suggests that foreign states shall make trading with African states dependent upon whether the African states

<sup>206</sup> Cf. 1st Activity Report of the African Commission on Human and Peoples' Rights, 9 *HRLJ* 1988, p 326; 2nd Activity Report, 11 *HRLJ* 1990, p 390; 3rd Activity Report, 11 *HRLJ* 1990, p 430; 4th Activity Report, 12 *HRLJ* 1991, p 278.

<sup>207</sup> Kodjo, *op.cit.* (n. 198), p 282.

respect human rights or not and cites the Lomé III Convention as a step in the right direction.<sup>208</sup> The Lomé Conventions link Africa, the Caribbean and the Pacific countries to the European Communities. An explicit request on the part of a representative of Africa (although not acting in an official capacity) for foreign intervention in human rights matters, or any other matters, is unusual to say the least.

## 1.3 Limitations

### 1.3.1 The Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights

In the Universal Declaration of Human Rights, there is no single restricting article aimed particularly at freedom of information in Article 19. Article 29 of the Universal Declaration, however, establishes the outer limits for the exercise of all individual human rights and freedoms previously declared:

“1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.”

Paragraph 2 was subsequently rewritten as Article 19 para. 3 of the Covenant on Civil and Political Rights and para. 3 was transformed both into Article 20 as far as freedom of information in particular is concerned, and into Article 5 as far as all rights and freedoms recognized in the Covenant are concerned.

Thus in the case of the Covenant on Civil and Political Rights there is a limitation clause attached directly to the article on freedom of information. Article 19 para. 3 of the International Covenant on Civil and Political Rights states that:

<sup>208</sup> Ibid.; 24 ILM 571.

“The exercise of the rights provided for in para. 2 of this article [i.e. freedom of expression including freedom of information] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For the respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

The original form of Article 19 para. 3 (and 1 and 2) as it had been worked out in the Commission on Human Rights was kept in the Covenant.<sup>1</sup> The Western states and Western oriented developing states supported Article 19 in its original form. The Soviet bloc and its Third World sympathizers struggled to have more restrictions inserted into Article 19 but were not successful on that point. While the Covenant was being drafted the number of independent developing states grew enormously. The developing states did not form a “bloc” of their own to begin with, but sided either with the West or the Soviet bloc. In the case of freedom of information it was not until the 1970s that the developing countries appeared united and consistently sided with the Soviet bloc.

During the debates in the Third Committee the Soviet bloc along with some Third World countries wanted to have a prohibition of propaganda for war and racial and national hatred inserted also in Article 19 (there was another draft article on this matter which later became Article 20, see further below chapter 1.3.2). The typical Soviet bloc standpoint, well expressed by the Czechoslovak delegate, was that it was important to ensure that freedom of opinion and expression was not abused to the detriment either of individuals or of peoples.<sup>2</sup> “Consequently, freedom of information had to be limited in the very interests of society, which had to be protected especially against propaganda of war.”<sup>3</sup> The Soviet delegate added that freedom of information was violated especially in countries where all information media were in the hands of a few monopolistic groups.<sup>4</sup>

The Albanian delegate stated, representatively, that “[h]e shared the concern of those who feared that such freedom might be abused by fas-

<sup>1</sup> Cf. UN Doc. A/2929, 1 July 1955, *supra* ch. 1.2.2.2 (n. 57), p 144.

<sup>2</sup> Cf. UN, GAOR, 16th Sess., 1961, Third Committee, Summary Records of Meetings, p 62. Cf. also the Polish delegate p 67; the Bulgarian delegate p 72; and the Byelorussian delegate p 90.

<sup>3</sup> *Ibid.*, p 62.

<sup>4</sup> *Ibid.*, p 58.

cists, racists and other persons spreading war propaganda, enmity among nations, racial discrimination and slanderous rumours. The freedom to impart information regardless of frontiers might also serve as an excuse for the dispatch of propaganda harmful to the interests of States and for the activities of radio stations and organs of the Press disseminating false information.”<sup>5</sup> It was difficult to understand, according to the delegate of Albania, “the attitude of some delegations towards restrictions which would establish conditions for the broadest possible exercise of freedom of expression.”<sup>6</sup> The idea that greater, “true” or “genuine” freedom is enhanced by restrictions may be noted. It is a theme which will reappear in the information debate of the 1970s. “Genuine freedom of information”, said the Byelorussian delegate, in supporting restrictive amendments, “should promote the peace and progress of mankind.”<sup>7</sup>

The delegate for Mali gave expression to an attitude, understandable in itself, typical of the “anti-Western” developing countries: “In the anti-colonial struggle, her country had had to fight against attempts to suppress objective information. The colonial system had endeavoured to keep the people in a state of ignorance and confusion. The school books, for instance, had portrayed national heroes as bloodthirsty petty kings or as highwaymen. There was no African liberation movement which had not been depicted by the European colonialists as seditious intrigues organized by ambitious and unscrupulous agitators or else by communists. No important African leader had escaped campaigns of defamation in the imperialist information media. Africa was still being flooded with indecent publications intended to disrupt the cultural development of its peoples.”<sup>8</sup>

The typical Western standpoint was to oppose all amendment proposals—even Article 19(3) in its original form was opposed by some delegations—in the name of freedom, as they understood it. The Swedish delegate stated: “Although freedom of expression was admittedly subject to abuses, his delegation strongly supported the free dissemination of information, for it was convinced that, when truth and untruth were left to compete with each other, it was always truth which

<sup>5</sup> *Ibid.*, p 80.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, p 90.

<sup>8</sup> *Ibid.*, pp 79–80. Cf. also Cuba, *ibid.*, p 88.

emerged triumphant.”<sup>9</sup> In this way the Swedish delegate also succinctly expressed the core of the free flow of information doctrine. The Danish delegate pointed to the fact that too many delegations believed it more important to provide international legal justification for restrictions on freedom of information than to provide international legal guarantees for that freedom.<sup>10</sup>

In opposing the insertion of references to propaganda for war and hatred into Article 19 itself, a representative of a pro-Western developing country, Chile, emphasized the seemingly self-evident, namely that the primary purpose of Article 19 “was in fact to create conditions in which opinions and information could be disseminated as freely as possible.”<sup>11</sup> The Chilean delegate was joined by another pro-Western developing country, Uruguay. The Uruguayan delegate agreed with the delegate of Chile that Article 19, being an article of a covenant on human rights, established freedom of opinion and expression and freedom of information as rights of the individual.<sup>12</sup> “The wording should therefore emphasize the rights and not the restrictions to which they might be subject.”<sup>13</sup> The delegate for Uruguay made another important statement of principle: “Essentially, the point at issue was a difference of concept between delegations which considered freedom of information from the point of view of a people or a country and those which, like his own, looked upon it mainly from the point of view of the individual.”<sup>14</sup>

A couple of comments can be made with regard to the Chilean and Uruguayan statements. Since the amendment proposals concerning propaganda, which would limit the kinds of information and ideas protected in principle by Article 19(2), were voted down, the view that freedom and not restriction or control is the basic presumption and purpose of Article 19 was upheld by a majority of states. Thus, freedom of information was not by definition limited to “freedom to disseminate some kinds of information and ideas” or “freedom to disseminate information and ideas fostering peace and good-neighbourliness”.

<sup>9</sup> *Ibid.*, p 68.

<sup>10</sup> *Ibid.*, p 73. Cf. also the Canadian delegate, *ibid.*, p 74.

<sup>11</sup> *Ibid.*, p 62.

<sup>12</sup> *Ibid.*, p 64.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

Also, in accordance with the Uruguayan statement, a majority of the states upheld the view that freedom of information is indeed primarily an individual matter and not above all a concern of peoples or countries. Both these conclusions are very fundamental and very important in relation to a discussion on the nature of freedom of information and accordingly as a starting-point for the interpretation of the provisions on freedom of information in the human rights agreements.

Article 19(3) in its original non-amended form nevertheless allows for quite extensive restrictions on freedom of information on certain conditions and for certain purposes. It can be noted that the restrictions only have to be "necessary" and not for example "necessary in a democratic society" which is the narrower formula used in the European Convention.<sup>15</sup> However, in the view of this author, an interpretation in good faith of the term "necessary" in Article 19(3) ought to result in "necessary in a democratic society" in the European sense, even if this is not explicitly stated in the text.

The restrictions must be provided by law and be necessary in order to meet the legitimate purposes. The legitimate purposes are the respect of the rights or reputations of others and the protection of national security or of public order (*ordre public*), or of public health or morals.<sup>16</sup> Some of these concepts like "national security" and "public order" and even "public health" or "morals" are vague and may in principle be invoked to justify a large number of measures restricting freedom of information. Bloed and de Wouters d'Oplinter even think that the Soviet bloc jamming of foreign radio broadcasts which has been an important subject for dispute between East and West can be justified under Article 19(3) with reference to the protection of national security or public order.<sup>17</sup> However, Bloed and de Wouters d'Oplinter still find the Soviet jamming illegal because it is not provided for by law.<sup>18</sup>

<sup>15</sup> See further ch. 1.3.3.

<sup>16</sup> On the subject of morals there is also the earlier mentioned International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 1923, which may seem to be obsolete but which is undeniably still in force (see *supra* ch. 1.1.1 (n. 7)).

<sup>17</sup> Cf. Bloed and de Wouters d'Oplinter, "Jamming of Foreign Radio Broadcasts", in *Essays on Human Rights in the Helsinki Process*, Ed. by Arie Bloed and Pieter van Dijk, 1985, pp 169-173.

<sup>18</sup> Cf. *ibid.*, p 171. On jamming, radio propaganda and freedom of information see further Comment, "Jamming the Stations: Is there an International Free Flow of Information?", *California Western International Law Journal*, vol. 14, 1984, pp 501-529; Price, "Jamming and the Law of International Communications", *Michigan Yearbook of International Legal Studies*, 1984, pp 391-403; Note, "Radio Propaganda in the Contexts of International Regulation and the Free Flow of Information as a Human Right", *Brooklyn Journal of International Law*, vol. 5, 1979,

The expression “provided by law” in Article 19, according to Partsch, is designed to “assure the rule of law, the principle of legality, a knowledge of the existence of the law and accessibility to it by those affected, and sufficient definiteness as to its content and meaning.”<sup>19</sup> The corresponding expressions in the corresponding articles in the American and European Conventions have the same significance.<sup>20</sup>

Dimitrijevic points to a particular aspect of Article 19(3) which at least, theoretically, may allow for far-reaching restrictions on freedom of information, namely the addition of the French “*ordre public*” in brackets supposedly to explain the meaning of the English “public order”.<sup>21</sup> As Dimitrijevic points out, however, the two concepts have different meanings. The term “*ordre public*” is often translated into English as “public policy”. It is used predominantly in conflict of laws situations, where it indicates that a given rule of law, or even judicial decision, is valid and will be applied only if it conforms with the foundations and the general essence of the constitutional and legal system of the relevant state. In the words of Dimitrijevic: “Whereas ‘public order’ means basically absence of disorder or disturbances, *ordre public* may have political and ideological meanings, thus enabling governments to restrict the freedom of expression if it is perceived to conflict with the ‘general philosophy’ or socio-economic system of the state. Given the fact that many constitutions are in fact programmatic, or contain at least a statement of political and social ideals and aims, this is a real danger.”<sup>22</sup>

As Dimitrijevic says, the addition of *ordre public* with its political and ideological connotations is potentially ominous. It could seem to open the door for general content control of ideas and information sought, received or imparted. The question is whether this effect was

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pp 154–177.

<sup>19</sup> Partsch, op.cit. ch. 1.2.1 (n. 8), p 220.

<sup>20</sup> The issue was touched upon by the European Court of Human Rights in The Sunday Times case, supra ch. 1.2.3, (n. 86), paras. 46–53, in relation to a discussion concerning whether a rule of common law could qualify as being “prescribed by law”. Cf. also the Barthold case, supra ch. 1.2.3 (n. 86), para. 46 and the judgment of Silver and others of 25 March 1983, Series A No. 61, paras. 85–95. In Open Door Counselling Ltd and Dublin Well Woman Centre Ltd and others against Ireland, Applications nos. 14234-5/88, report of 7 March 1991, the European Commission of Human Rights was of the opinion that Article 10 had been violated because the restriction in question was not prescribed by law. In the American context see Advisory Opinion OC-7/85 of August 29, 1986, of the Inter-American Court of Human Rights, supra ch. 1.2.5 (n. 183).

<sup>21</sup> Cf. Dimitrijevic, op.cit. ch. 1.2.1 (n. 9), pp 61–62.

<sup>22</sup> Ibid., p 62.

really intended by the addition of “*ordre public*”. Such an interpretation of Article 19(3) would go diametrically against the provisions in Article 19(2), saying that information and ideas “of all kinds” are protected by Article 19.<sup>23</sup> It would also go against the ideal of pluralism of opinions which underlies Article 19 of the Covenant. In the case of Article 10 of the European Convention the Commission and the Court have expressly and repeatedly stated that this is one of the most important purposes of freedom of information. In the European context the value of pluralism is linked to the generally embraced concept of pluralist democracy—in Article 10(2) it is even stated that restrictions on freedom of information must be “necessary in a democratic society”—whereas the link to pluralist democracy is not as obvious in the global context of the Covenant.<sup>24</sup> Nonetheless a liberal undercurrent also characterizes the Covenant.

To this author it seems unlikely that anyone would seriously bring up the *ordre public* interpretation, in the French sense, as a correct interpretation of Article 19(3) (b).<sup>25</sup> It also seems unlikely that the UN Human Rights Committee, which applies the Covenant on Civil and Political Rights, would embrace such an interpretation. The members of the Human Rights Committee, if not expressly at least implicitly, should be inspired, *inter alia*, by the practice of the European Commission and Court and also by that of the Inter-American judicial organs,<sup>26</sup> and in the case of the European and American Conventions there are no references to *ordre public* in the relevant articles. There may be differences in content between the human rights agreements, but these should rather be differences in degree and not in kind as regards the protection granted to the various human rights. The *ordre public* interpretation would make the Covenant qualitatively different from the European and American Conventions in a way which it is

<sup>23</sup> Cf. *mutatis mutandis* the statement by the European Court of Human Rights in the Handyside judgment (supra ch. 1.2.3, (n. 93)) that “Freedom of expression [...] is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population” (para. 49).

<sup>24</sup> Cf. Cohen-Jonathan, op.cit. ch. 1.2.1 (n. 19), pp 474, 480.

<sup>25</sup> Cf., however, Henkin who writes that “public order (*ordre public*)” is clearly intended to incorporate both meanings (Henkin, “Introduction”, in *The International Bill of Rights. The Covenant on Civil and Political Rights*, 1981, p 27).

<sup>26</sup> There are no explicit references to regional case law in the views adopted on individual communications by the Human Rights Committee.

highly doubtful whether the authors intended. The reference to the *ordre public* was not included in the original text of Article 19(3) worked out by the UN Commission on Human Rights.<sup>27</sup> However, even without the additional ground for limiting freedom of information afforded by the inclusion of *ordre public*, as we have seen, there still remain significant opportunities for restrictions according to the other criteria mentioned earlier.

The issue of restriction on the grounds of public morals has been examined by the UN Committee on Human Rights.<sup>28</sup>

The complaint concerned an alleged interference by Finnish authorities, including organs of the state-controlled Finnish Broadcasting Company (FBC), with the complainants' right to freedom of expression and information under Article 19 by censoring radio and TV programmes dealing with homosexuality. Public encouragement of indecent behaviour between persons of the same sex is prohibited according to the Finnish penal code. The authors of the communication claimed that the wide interpretation given to this provision did not permit an objective description of homosexuality.

Finland replied, *inter alia*, that the purpose of the prohibition of public encouragement to indecent behaviour between members of the same sex is to reflect the prevailing mores in Finland as interpreted by the Parliament and by large groups of the population. The state party also referred to Article 19 para. 3 permitting certain restrictions on the freedom of expression and information for the protection of public morals. Yet, Finland contended that the decisions of the FBC concerning the programmes in question did not involve the application of censorship but were based on "general considerations of programme policy in accordance with the internal rules of the Company."<sup>29</sup>

In considering the merits of the communication, the Human Rights Committee started from the premise that Finland was actually responsible for actions of the FBC since the state holds a dominant stake (90 per cent) in the company and the company likewise is placed under specific government control.<sup>30</sup> The Committee then observed that pub-

<sup>27</sup> Cf. UN Doc. A/2929 of 1 July 1955, *supra* ch. 1.2.2.2, (n. 57), p 144.

<sup>28</sup> Yearbook of the Human Rights Committee 1981–1982, vol. II, Doc. No. CCPR/3/Add. 1, Communication No. 61/1979, p 407. Other communications, relating marginally to Article 19, have been tried by the Human Rights Committee but will not be recounted here.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*, p 408.

lic morals differ widely and that there is no universally applicable common standard. "Consequently in this respect, a certain margin of discretion must be accorded to the responsible national authorities."<sup>31</sup> The Committee found that it could not question the decisions of responsible organs of the FBC, according to which radio and TV are not the appropriate fora to discuss issues related to homosexuality to the extent that a programme could be judged as encouraging homosexual behaviour. Referring particularly to the potentially harmful effects on minors of such programmes, the Human Rights Committee concluded that there had been no violation of the rights of the complainants under Article 19 para. 2.<sup>32</sup>

It was the European Court of Human Rights who developed the doctrine that states have a certain "margin of appreciation" in restricting the conventional rights and freedoms. Issues relating to freedom of information and public morals have been tried by the European Commission and Court, in the light of the "margin of appreciation" doctrine, with the same result as in the Human Rights Committee case accounted for here.<sup>33</sup> The European organs do not even think that there is a common European standard of public morality, which may be true. Even more true, however, is the statement by the UN Human Rights Committee that there is no universally applicable common standard. That there is no common standard of morality, European or universal, does not mean, however, that the judicial organs are not entitled to scrutinize and materially reconsider a decision by the national authorities in a particular case.<sup>34</sup>

Perhaps public morals is a particularly sensitive issue for the international judicial organs. With regard to other grounds for restricting freedom of information than public morals, for instance the protection of the authority or impartiality of the judiciary or of the rights of others, the European organs have been less prone to accept the decisions of the national authorities within the "margin of appreciation"

<sup>31</sup> This reasoning strongly resembles the reasoning of the European Court of Human Rights in similar cases with relation to Article 10 of the European Convention. Cf. also Partsch, *op.cit.* ch. 1.2.1 (n. 8), p 220–221.

<sup>32</sup> Yearbook of the Human Rights Committee 1981–1982, vol. II, *supra* (n. 28), p 408.

<sup>33</sup> Cf. Eur. Court H.R., *Handyside* judgment, *supra* ch. 1.2.3, (n. 93); Müller and Others judgment of 24 May 1988, Series A No. 133.

<sup>34</sup> Cf. Pinto, *op.cit.* ch. 1.2.1 (n. 18), pp 196–197. Cf. also the separate opinion of Judge Mosler in the *Handyside* judgment, *supra* ch. 1.2.3, (n. 93), para. 2.

and more prone to reject the national decisions.<sup>35</sup> This can also be explained by saying that the national margin of appreciation is more or less broad in relation to different restricting aims—and in relation to different kinds of information.<sup>36</sup> In no case is there any reason to be as lenient with decisions of national authorities as the UN Committee on Human Rights was with Finland in the case accounted for above.

Some members of the Committee on Human Rights, while concurring with the conclusion of the Committee, submitted an individual opinion which is worth comment.<sup>37</sup> The individual opinion emphasized the difference between self-imposed restrictions on publishing, or the internal programme policy of the media, and externally imposed restrictions such as enforcement of criminal law or official censorship, neither of which took place in the present case. It is a matter of common sense, according to the individual opinion, that such internal decisions either entirely escape control by the Committee or must be accepted to a larger extent than externally imposed restrictions. “It is not possible to apply the criteria of article 19, paragraph 3, to self-imposed restrictions.”<sup>38</sup>

It seems as if the members submitting the individual opinion really mean that the Committee should not have tried this case at all since the decisions in question of the FBC not to broadcast certain programmes were based on the internal programme policy and were not caused by external official censorship. It seems further as if these members do not differentiate in principle between privately owned media and media owned and/or controlled by the state. This view if generally upheld would allow the malevolent state to introduce far-reaching restrictions on the freedom of expression and information by means of discreetly imposing restrictive “programme policies” on the mass media it owned and/or controlled, and by appointing compliant employees to apply these policies. This kind of interpretation of Article 19 would seem to open the door for extensive indirect censorship or other indirect restrictions on freedom of information, something which cannot be in line

<sup>35</sup> Cf. in particular *The Sunday Times* judgment, *supra* ch. 1.2.3, (n. 86) and the *Lingens* judgment, *supra* ch. 1.2.3, (n. 73).

<sup>36</sup> Cf. *Cohen-Jonathan*, *op.cit.* ch. 1.2.1 (n. 19), p 473. Cf. also *The Sunday Times* judgment, *supra* ch. 1.2.3, (n. 86), para. 59, and *X and Church of Scientology v. Sweden*, *supra* ch. 1.2.3, (n. 76), p 73.

<sup>37</sup> Cf. *Yearbook of the Human Rights Committee 1981–1982*, vol. II, *supra* (n. 28), p 408.

<sup>38</sup> *Ibid.*

with Article 19, and something which is in fact expressly prohibited in the American Convention, Article 13(3).<sup>39</sup>

### 1.3.2 Article 20 of the International Covenant on Civil and Political Rights

After Article 19(3) further restrictions on the freedom of information follow in Article 20. Article 20 states that:

“1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”

In the original proposal worked out by the UN Commission on Human Rights, the corresponding article (then Article 26) only contained the second paragraph of the final Article 20.<sup>40</sup> The inclusion of war propaganda took place on the initiative of representatives of the Soviet bloc and some Third World countries.<sup>41</sup> The decision to include Article 20 was among the most controversial decisions taken during the drafting of the Covenant.<sup>42</sup> Although sympathetic with the inherent spirit, the Western states looked with scepticism upon both the first and second paragraphs of the Article. This was because of the vagueness of their content and the risk that they would entail for excessive restrictions on freedom of information, including prior censorship and because the Western states did not think that such provisions aiming primarily at inter-state relations and not proclaiming a specific right belonged in an instrument laying down basic individual human rights.<sup>43</sup> They opposed it moreover because they thought that Article 19(3) pro-

<sup>39</sup> See further ch. 1.3.4.

<sup>40</sup> UN Doc. A/2929, of 1 July 1955, *supra* ch. 1.2.2.2, (n. 57), p 185.

<sup>41</sup> On war propaganda and international law, see for example Hannikainen “Prohibition of War Propaganda”, in Nordenstreng, *The Mass Media Declaration of UNESCO*, 1984, pp 167–181; Murty, *The International Law of Propaganda. The Ideological Instrument and World Public Order*, 1989; Thomas and Thomas, jr., *Non-intervention. The Law and its Import in the Americas*, chapter XIII “Intervention by Propaganda”, pp 273–302; Whitton, “Hostile International Propaganda and International law”, in *National Sovereignty and International Communication*, Ed. by Kaarle Nordenstreng and Herbert I. Schiller, 1979, pp 217–229; Whitton and Larson, *Propaganda. Towards Disarmament in the War of Words*, 1964.

<sup>42</sup> Cf. Cohen-Jonathan, “Liberté de Circulation des Informations et Souveraineté des Etats”, in *Société Française pour le Droit International*, Colloque de Strasbourg: La Circulation des Informations et le Droit International, 1978, p 44.

<sup>43</sup> Cf. the British delegate, UN, GAOR, 16th Sess., 1961, Third Committee, Summary Records of Meetings, p 94.

vided sufficient protection against any abuse of freedom of information.<sup>44</sup>

These counter-arguments related primarily to the prohibition against propaganda for war. The vagueness of "propaganda for war" entailed that "what was condemned in one country as war propaganda might be welcomed in another as laudable activity in pursuance of a positive policy."<sup>45</sup> As Dimitrijevic points out, para. 2 of Article 19 should present fewer difficulties since the wording of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 is much stronger and makes any dissemination of ideas based on racial superiority and hatred punishable.<sup>46</sup> Also, Article 3 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, makes direct and public incitement to commit genocide punishable.<sup>47</sup> Under Article 4 of the International Convention on the Suppression and Punishment of the Crime of Apartheid, furthermore, the party states undertake to suppress any encouragement of the crime of apartheid and similar segregationist policies or their manifestations.<sup>48</sup> In the more recent European Convention on Transfrontier Television and the European Communities Council Directive concerning the Pursuit of Television Broadcasting Activities, furthermore, provisions are made against programmes which are "likely to incite to racial hatred" (Article 7 of the Convention) or which "contain any incitement to hatred on grounds of race, sex, religion or nationality" (Article 22 of the Council Directive).<sup>49</sup>

The proponents of Article 20 for their part were of the opinion that the insertion of Article 20 was necessary for the preservation of peace, which according to some did, and still does, in fact constitute a fundamental human right.<sup>50</sup> In their view the provisions in Article 19(3) did

<sup>44</sup> Cf. the Norwegian delegate, *ibid.*, p 121. Cf. also Cohen-Jonathan, *op.cit.* (n. 42), pp 44-46, and Dimitrijevic, *op.cit.* ch. 1.2.1 (n. 9), p 62.

<sup>45</sup> Cf. the Norwegian delegate, *ibid.*

<sup>46</sup> Cf. Dimitrijevic, *op.cit.* ch. 1.2.1 (n. 9), p 62. Cf. also Cohen-Jonathan, *op.cit.* (n. 42), p 45. The Convention was adopted and opened for signature and ratification by UN Gen. Ass. res. 2106 A (XX), of 21 December 1965, and entered into force on 4 January 1969, 660 UNTS 195.

<sup>47</sup> Adopted and opened for signature and ratification by UN Gen. Ass. res. 260 A (III), of 9 December 1948, and entered into force on 12 January 1951, 78 UNTS 277.

<sup>48</sup> Adopted and opened for signature and ratification by UN Gen. Ass. Res. 3068 (XXVIII) of 30 November 1973, and entered into force on 18 July 1976, 1015 UNTS 243.

<sup>49</sup> See ch. 1.2.3, (n. 90).

<sup>50</sup> Cf. the Polish delegate, UN, GAOR, 16th Sess., 1961, Third Committee, Summary Records of

not suffice because they were only facultative whereas Article 20 entailed an obligatory restriction on freedom of information, through the mandatory prohibition by law. On the subject of the dissemination of war propaganda we have seen that there also exists the Convention on the Use of Broadcasting in the Cause of Peace, adopted in 1936, which is still in force.<sup>51</sup> The Western states at least from the time after World War II and onwards have generally held that a free discussion and a free circulation of news offers the best protection against propaganda of all kinds.<sup>52</sup> Concerning the content of Article 20 it can be noted that para. 1 speaks unconditionally of propaganda for war which shall be prohibited by law, whereas para. 2 states that advocacy of national, racial or religious hatred *that constitutes incitement to discrimination, hostility or violence* be prohibited by law.

The Soviet delegate, Sapozhnikov, during the debate in the Third Committee thought that this qualification made the text of Article 20 too weak. The prohibition of advocacy of hatred on condition that it constitutes actual incitement to violence reduced the possibility of eradicating the evil, said Sapozhnikov, and argued in favour of a categorical prohibition.<sup>53</sup> Parenthetically, Sapozhnikov was of the opinion that the incorporation of a prohibition of “all war propaganda” in the Covenant would help to do away with the Cold War and promote peaceful co-existence in general between nations.<sup>54</sup>

The Third World countries which supported Article 20, i.e. the overwhelming majority, argued for example like the Indonesian delegate that “peace—meaning not merely the absence of war, but also the absence of any propaganda likely to lead to an arms race—was essential for the economic development of Indonesia and many countries of Asia, Africa and Latin America.”<sup>55</sup> Indonesia hoped that the resources devoted to military ends would instead be used for developing the

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Meetings, p 99.

<sup>51</sup> See chapter 1.1.1 (n. 2). Concerning the negative attitude towards the inclusion of a prohibition of propaganda for war in Article 20 of the International Covenant displayed by the Norwegian delegate quoted above, who spoke on behalf of all the Nordic delegations, it is noteworthy that Norway, Denmark, Finland and Sweden had all ratified the Broadcasting Convention without reservations.

<sup>52</sup> Cf. Cohen-Jonathan, *op.cit.* (n. 42), p 46.

<sup>53</sup> Cf. UN, GAOR, 16th Sess., 1961, Third Committee, Summary Records of Meetings, pp 98–99; cf. also the Polish delegate, p 99.

<sup>54</sup> *Ibid.*, p 98.

<sup>55</sup> *Ibid.*, p 105.

under-developed countries;<sup>56</sup> a frequently reiterated hope during the years to come.

Another Third World delegate from Congo, Léopoldville, held that the fear of excessive restrictions on freedom of information expressed by several delegations was not justified, “for it was just as logical to restrict freedom of expression by prohibiting war propaganda as to restrict individual liberty by prohibiting murder and theft.”<sup>57</sup> The Congolese delegate also casually pointed to the significant fact that since the original text of Article 20 had been drafted in 1953, many new countries had been able to make themselves heard in the United Nations.<sup>58</sup>

At the roll-call vote in the Third Committee, called for by the Soviet delegate—“for the debate had shown that, in the last analysis, it was a question of choosing between freedom to spread war propaganda and the prohibition of it, between freedom to spread racial hatred and the prohibition of it”, and every delegation “must therefore take its stand publicly”—the result in relation to Article 20 as a whole was 52–19–12, with the Western states together with a few developing states either voting against or abstaining.<sup>59</sup> The Covenant on Civil and Political Rights as a whole was eventually adopted unanimously, by the UN General Assembly. Upon ratification of the Covenant several Western states have, however, made reservations concerning Article 20.<sup>60</sup>

The placing of the original Article 26 directly after Article 19 as Article 20 can be interpreted in different ways. The intention was to emphasize the link between the two in the sense that it was important to take account also of the provisions of Article 20 when exercising freedom of information according to Article 19 and vice versa.<sup>61</sup> This supposedly close relationship may be interpreted as limiting even more the

<sup>56</sup> Ibid.

<sup>57</sup> Ibid., p 118.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Today (after Australia, in 1984, withdrew its reservation to Article 20, among others, of the Covenant) the following countries have made reservations, or declarations, to Article 20: Belgium (para. 1, declaration), Denmark (para. 1), Finland (para. 1), France (para. 1, declaration), Iceland (para. 1), Luxembourg (para. 1, declaration), Malta, Netherlands (para. 1), New Zealand, Norway (para. 1), Sweden (para. 1) and the United Kingdom. See Multilateral treaties deposited with the Secretary-General, status as at 31 December 1991, p 133. In the French declaration, significantly, considering the debate on the difficulties in interpreting “propaganda for war”, France specifies how it understands the term “war”, namely as “war in contravention of international law”.

<sup>61</sup> Cf. Partsch, *op.cit.* ch. 1.2.1 (n. 8), p 227.

exercise of freedom of information according to Article 19, than if Article 20 had remained Article 26.<sup>62</sup>

On the other hand it is also possible to argue that Article 19 proclaiming freedom of information is the superior article of the two and that their interconnection means that the limitation clause of Article 19(3) applies to Article 20 as well, although neither article refers to the other.<sup>63</sup> From this angle it may instead be an advantage that Article 26 was turned into Article 20, the replacement would then work to the advantage of the freedoms laid down in Article 19 and not to their disadvantage as some have feared. However, the relative placement itself is a rather marginal issue compared to the content of the two articles. In relation to an individual complaint against Canada, the Human Rights Committee stated that Canada did not violate Article 19 by legislating against the advocacy of racial or religious hatred in accordance with Article 20.<sup>64</sup>

It could be argued that Article 20 is superfluous, especially if one agrees with the interpretation that measures undertaken under Article 20 must also conform with the requirements of Article 19(3). It would seem as if war propaganda and advocacy of hatred inciting to violence could just as well be prohibited with reference to “national security” or “public order”, or, in the case of advocacy of hatred, with reference to Article 5(1) saying that nothing in the Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized therein. On the other hand, under Article 20 the parties are obliged to introduce certain restrictions whereas under Article 19(3) the restrictions are facultative, so in this sense, within the context of the Covenant alone, Article 20 is not superfluous. The content of Article 20(2), however, is to a great extent covered already by the above-mentioned Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination and by Article 3 of the Convention on the Prevention and Punishment of the Crime of

<sup>62</sup> Cf. the Norwegian delegate, UN, GAOR, 16th Sess., 1961, Third Committee, Summary Records of Meetings, p 121.

<sup>63</sup> Cf. also the introductory paragraph of Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (*supra* n. 46).

<sup>64</sup> Selected Decisions of the Human Rights Committee under the Optional Protocol, vol. 2, October 1982 – April 1988, Doc. CCPR/C/OP/2, Communication No. 104/1981, p 25.

Genocide.<sup>65</sup> As concerns propaganda for war (of aggression) carried out by the states themselves, it is most certainly prohibited also under customary international law.<sup>66</sup>

A last feature of Article 20 which is pointed out by some authors is that whereas the signatory states are obliged to prohibit propaganda for war and advocacy of hatred inciting to violence, they are not obliged to make such propaganda or advocacy a crime.<sup>67</sup> The Human Rights Committee has said, however, that in addition to a prohibition, provisions should be made for an appropriate sanction in the case of violation of the prohibition.<sup>68</sup> Moreover, the parties to the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Prevention and Punishment of the Crime of Genocide are obliged to make advocacy of racial hatred and incitement to genocide punishable.

On the subject of propaganda for war and advocacy of hatred inciting to violence it can be added that in the Final Act of the Conference of Security and Co-operation in Europe (CSCE) of 1975, the participating states recognize "their duty to refrain from propaganda for wars of aggression."<sup>69</sup>

### **1.3.3 The European Convention on Human Rights**

The European Convention, after having proclaimed the right of everyone to freedom of expression including freedom of opinion and freedom of information states that:

"2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for

<sup>65</sup> See n. 46 and n. 47.

<sup>66</sup> Cf. the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted by UN Gen. Ass. res. 2625 (XXV), of 24 October 1970. The relevant passage is found under the proclaimed principle that states shall refrain in their international relations from the threat or use of force against other states.

<sup>67</sup> Cf. Dimitrijevic, *op.cit.* ch. 1.2.1 (n. 9), p 62, and Partsch, *op.cit.* ch. 1.2.1 (n. 8), p 228.

<sup>68</sup> Human Rights Committee, General Comments, Doc. CCPR/C/21/Rev.1, 19 May 1989, General Comment No. 11, para. 2.

<sup>69</sup> Final Act of the Conference of Security and Co-operation in Europe, *supra* ch. 1.2.4 (n. 158).

preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

From the wording of Article 10(1) and (2) it would seem as if freedom of opinion is not absolute according to the European Convention, but as if it too could be subjected to “formalities, conditions, restrictions or penalties” etc. This is no doubt a wrong interpretation. It is freedom of expression and information, to the extent that there is any difference, which may be limited under Article 10(2), not freedom of opinion.<sup>70</sup>

Article 10(2) is more detailed as concerns the grounds for permitted restrictions on freedom of information than both the universal and the other regional human rights instruments. Two grounds for restriction mentioned in Article 10(2) are not included at all in the other instruments, namely the prevention of “the disclosure of information received in confidence” and the maintenance of “the authority and impartiality of the judiciary”. Probably the same effect can be brought about, however, by invoking the vaguer “respect for the rights or reputations of others” or “protection of national security or of public order”, under the Covenant or the American Convention. The African Charter as we have seen is essentially different from the other human rights agreements in that, according to its wording, it seems to allow almost anything in the way of restrictions on freedom of information.<sup>71</sup>

The fact that Article 10(2) of the European Convention is comparatively detailed as to the permitted limitations of freedom of information could give the impression that the European governments were greatly interested in being able to restrict this freedom as easily as possible. All governments, unfortunately, including the democratically elected ones, have a tendency to want to unnecessarily restrict freedom of information. On the other hand, it can also be argued that a detailed list of accepted grounds for restricting freedom of information constitutes in fact better protection of this freedom than a shorter list with vaguer criteria which can be more arbitrarily and perhaps more extensively interpreted.

The latter argument is not that strong in relation to the European Convention, however, since all the vague criteria are kept in Article

<sup>70</sup> Cf. *Lingens judgment*, *supra* ch. 1.2.3 (n. 73), para. 46.

<sup>71</sup> Cf. *above* ch. 1.2.6 and *below* ch. 1.3.5.

10(2) while a couple of extra more definite grounds for restriction have been added. In any case it is not likely that the European states were and are more anxious to be able to restrict freedom of information more easily or to a greater extent than the states covered by the Covenant (other than the Europeans) or the American Convention, not to speak of the African Charter. So, the relative emphasis on limitations under the European Convention is not to be understood as if freedom of information is less well protected in Europe. Moreover, there is the European Commission and Court which, more or less vigilantly, guard freedom of information against encroachments of different kinds.

The "formalities, conditions, restrictions, or penalties" must be "prescribed by law" as in the case of Article 19(3) of the Covenant on Civil and Political Rights and be "necessary in a democratic society". The European Court has elaborated a three step test to decide whether a certain restriction can be regarded as being "necessary in a democratic society". The interference with freedom of information must correspond to "a pressing social need", it must be "proportionate to legitimate aim pursued" and the reasons given by the national authorities to justify it must be "relevant and sufficient under Article 10 para. 2".<sup>72</sup> The "democratic society" intended is obviously a pluralist liberal democracy of a Western, and now also Eastern, European kind, of which "[f]reedom of expression constitutes one of the essential foundations".<sup>73</sup>

There is no provision in the European Convention prohibiting propaganda for war or advocacy of hatred inciting to violence. This is not surprising, since we have seen how all Western states were opposed to the inclusion of such an article in the Covenant on Civil and Political Rights, especially as concerned propaganda for war.<sup>74</sup> However, there is Article 17 which prohibits activities aimed at the destruction of any of the rights and freedoms set forth in the Convention, for instance freedom of religion (Article 9) and freedom from racial and other kinds of discrimination (Article 14).<sup>75</sup> One form of discrimination regarding the

<sup>72</sup> Cf. Handyside judgment *supra*, ch. 1.2.3, (n. 93), paras. 48–50; The Sunday Times judgment, *supra* ch. 1.2.3, (n. 86), para. 62. See also Recent Developments, "Human Rights: Government Interference with the Press. The Sunday Times case", *Harvard International Law Journal*, vol. 21, 1980, pp 260–268. The three step "necessity test" has been confirmed in subsequent decisions by the Court.

<sup>73</sup> Cf. Handyside judgment, *ibid.*, para. 49.

<sup>74</sup> In the Third Committee of the General Assembly no member of the Council of Europe voted in favour of Article 20 of the Covenant.

<sup>75</sup> Cf. Glimmerveen and Hagenbeek (Nederlandse Volks Unie) v. The Netherlands, Applications

exercise of freedom of expression or information in political matters which is explicitly allowed according to the European Convention is discrimination against aliens. According to Article 16: "Nothing in articles 10, 11 [freedom of peaceful assembly and freedom of association] and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens." No cases relating to this article have been tried by the Commission or Court.

The European Commission has also accepted penal sanctions against the advocacy of national hatred inciting to violence under Article 10(2), for the protection of national security and public safety and for the prevention of disorder or crime. This was the case when an Austrian citizen encouraged the inhabitants in South Tyrol to revolt against Italy.<sup>76</sup>

In a recent case before the Commission, *Purcell et al. v. Ireland*, quite far-reaching restrictions on the potential propagation of national hatred inciting to violence were upheld with reference to the protection of the interests of national security and the prevention of disorder.<sup>77</sup> The applicants were journalists and producers at the Irish National Broadcasting Company. The Irish government had prohibited interviews or reports of interviews on radio or television with spokesmen and members of a number of organizations fighting in Northern Ireland. All of the organizations are unlawful according to Irish law except Sinn Féin which is a registered political party. Sinn Féin, however, while not a proscribed organization, in the words of the Commission, "condones the terrorist activities of one of the listed organizations—which is proscribed—and is closely associated with them".<sup>78</sup> The Commission also noted that the reporting of the activities of the listed organizations was not prohibited as such, only live interviews with their spokesmen.

Concerning the difference between the printed media (which were not affected by the restrictions in question) and radio and television, the Commission said that the impact of radio and television is more imme-

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nos. 8348/78 and 8406/78, decision of 11 October 1979, DR, vol. 18, p 187. Cf. also *Malinverni*, op.cit. ch. 1.2.1 (n. 23), p 445.

<sup>76</sup> Cf. *X v. Austria*, Application No. 5321/71, decision of 14 December 1972, Collection of Decisions, vol. 42, p 105.

<sup>77</sup> Application No. 15404/89, decision of 16 April 1991, 12 *HRLJ* 1991, p 254. The Commission also referred to Article 17: "By allowing, in Article 10 para. 2, certain restrictions on the exercise of the freedom of expression, the Convention recognises the principle that no group or person has the right to pursue activities which aim at the destruction of any of the rights and freedoms enshrined in it (cf. Article 17 of the Convention)."

<sup>78</sup> *Ibid.*, p 259.

diate than that of the printed media, and the possibilities for the broadcaster to correct, qualify, interpret or comment on any statement made on radio or television are limited in comparison with those available to journalists in the printed press. This reflection by the Commission is no doubt accurate. On the other hand, the great importance and impact particularly of television in modern society also makes this mass medium extra worthy of protection against governmental interference.

A final aspect of the Purcell case which may be commented upon is the fact that some concepts surrounding freedom of information—like “national security” and “public safety”—are very vague. The Court stated moreover in the Leander case that the margin of appreciation available to the respondent state in assessing the “pressing social need” in the field of national defence and security is wide.<sup>79</sup> Irrespective of the realities in the Purcell case, where the decision of the Commission may very well be adequate, one could also imagine cases where a totalitarian minded government would like to prevent oppositional groups from appearing on radio or television by referring to national security, public safety or the prevention of disorder or crime. The pluralistic reliability of the European Commission and Court is crucial in countering such tendencies, should they occur.

As should be obvious, a large number of cases have been tried by the Commission and Court in relation to the different aims of the restrictions under Article 10(2). No comprehensive account of the European case law will be given here.<sup>80</sup> Several references have already been made to the outcomes of the deliberations of the Commission and Court.

One important general comment regarding all the permitted restrictions under Article 10(2) was made by the Court in the Sunday Times case. Here the Court at one point was faced with the apparently conflicting principles of freedom of expression on one hand, and the maintenance of the authority and impartiality of the judiciary on the other. The English Law Lords had subordinated the former to the latter, but

<sup>79</sup> Cf. Eur. Court H.R., Leander judgment, *supra* ch. 1.2.3 (n. 84), para. 59. See also Engel and Others judgment of 8 June 1976, Series A No. 22; the Observer and Guardian judgment and The Sunday Times judgment (No. 2) of 26 November 1991, Series A nos. 216 and 217 respectively; and Pat Arrowsmith v. the United Kingdom, Application No. 7050/75, report of 12 October 1978, DR, vol. 19, p. 5. Concerning the “pressing social need” as part of the “necessity test”, cf. above p. 102. On the issue of freedom of information and national security in general, see *Free Speech and National Security*, Ed. by Shimon Shetreet, 1991.

<sup>80</sup> For such accounts, cf. Pinto, *op.cit.* ch. 1.2.1 (n. 18); Cohen-Jonathan, *op.cit.* ch. 1.2.1 (n. 19); van Dijk and van Hoof, *op.cit.* ch. 1.2.1 (n. 10).

the European Court pointed out that it had to take a different approach: “The Court is faced not with a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions which must be *narrowly interpreted* (emphasis added).”<sup>81</sup>

The Commission varied the same theme in the Lingens case: “In order to secure effectively the freedom of expression, any restrictions must be applied in a spirit of pluralism, tolerance and broadmindedness in particular where freedom of expression in political matters is involved.”<sup>82</sup> These rules of interpretation should be applicable also in relation to the other human rights agreements.

Malinverni is of the opinion that the practice of the European organs including the promotion of pluralism of information and ideas of the Handyside case, the restrictive interpretation rule of The Sunday Times case, the support of political debates and control of political leaders by the newspapers of the Lingens case and the emphasis on the public’s right to be properly informed of the Barthold case, among others, indicates that the Court and the Commission may have given freedom of information the status of “a preferred freedom”.<sup>83</sup>

### 1.3.4 The American Convention on Human Rights

The American Convention on Human Rights speaks somewhat more extensively of legitimate and illegitimate restrictions on the right to freedom of information than the other human rights agreements. It starts in Article 13 para. 2 by stating that:

“The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law and be necessary in order to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public health or morals.”

<sup>81</sup> The Sunday Times case, *supra* ch. 1.2.3 (n. 86), para. 65. Apropos of different terminologies of different authors and the interchangeability in reality of freedom of expression and freedom of information it can be noted that when Malinverni refers to this statement by the Court he talks of “freedom of information” although the Court expressly uses the term freedom of expression (cf. Malinverni, *op.cit.* ch. 1.2.1 (n. 23), p 460).

<sup>82</sup> Lingens case, *supra* ch. 1.2.3, (n. 73), Opinion of the Commission annexed to the judgment, para. 84.

<sup>83</sup> Malinverni, *op.cit.* ch. 1.2.1 (n. 23), p 460.

As in the case of the European Convention, according to the wording of Article 13 para. 2, it could seem as if the right to freedom of opinion or “of thought” is not an absolute right under the American Convention. As in the case of the European Convention this impression is probably false.

An important addition in Article 13 para. 2 is the explicit prohibition of prior censorship, which is only implicitly prohibited in Article 19 of the Covenant on Civil and Political Rights and Article 10 of the European Convention. Whether the African Charter even implicitly proscribes prior censorship—“Every individual shall have the right to express and disseminate his opinions within the law.”—is open to doubt.

As in the Covenant but in contrast to the European Convention there is no explicit mention of democracy or “democratic society” in Article 13(2). In Article 29(c) of the American Convention captioned “Restrictions regarding interpretation” a reference to “representative democracy as a form of government” is made as concerns the interpretation of the Convention as a whole: nothing in the Convention shall be interpreted as precluding other rights or guarantees inherent in the human personality or derived from representative democracy as a form of government. This is a somewhat more exact concept than “a democratic society” in Article 10(2) of the European Convention. As we have seen, “democratic” and “democratic society” have been given widely different meanings by different participants in the debates on freedom of information, although the risk of this occurring within Europe is less than on the universal level.

The Inter-American Court has stated in an advisory opinion that the compulsory licensing of journalists, “which does not allow those who are not members of the [association] to practise journalism and limits access to the [association] to university graduates who have specialized in certain fields” does not comply with the requirements of Article 13(2) and therefore violates the Convention.<sup>84</sup> The Costa Rican regime of compulsory licensing, coupled with the requirement that only gradu-

<sup>84</sup> OAS, Annual Report of the Inter-American Court of Human Rights 1985, OEA/Ser.L/V/III.12, doc. 13, August 15, 1985, Advisory opinion OC-5/85 of November 13, 1985, pp 19–65, p 44. The case originated from a petition lodged with the Inter-American Commission by a US journalist working in Costa Rica called Stephen Schmidt—in the doctrine the case is usually referred to as the Schmidt case (Cf. OAS, Annual Report of the Inter-American Commission on Human Rights 1984–1985, OEA/Ser.L/V/II.66, doc. 10, rev. 1, October 1st, 1985, res. No. 17/84, case No. 9178 (Costa Rica), October 3, 1984, pp 51–77.)

ates from a particular university could join the journalists' association, conflicted, in the opinion of the Court, both with "the right to freedom of thought and expression that belongs to each individual" and with "the right of the public at large to receive information from any source without interference."<sup>85</sup> If, on the other hand, the association of journalists had been open to any individual who wanted to practise journalism, irrespective of educational background for example, it seems *e contrario* as if the Inter-American Court would have accepted such compulsory licensing as being in accordance with Article 13.<sup>86</sup> Thus it does not appear from the advisory opinion as if the Inter-American Court would regard all forms of compulsory licensing of journalists as unlawful as such.

Referring, *inter alia*, to Article 29(c) of the American Convention the Inter-American Court said concerning the interpretation of Article 13(2) that "the question whether a restriction on freedom of expression imposed by a state is 'necessary to ensure' one of the objectives listed in subparagraphs (a) or (b) must be judged by reference to the legitimate needs of *democratic societies and institutions*" (emphasis added).<sup>87</sup>

Two aspects of this advisory opinion are worthy of comment. Firstly, the Costa Rican government requested the advisory opinion in fulfilment of a commitment to the Inter-American Press Association (IAPA). This organization has been much involved in the debate on a NWICO and the compulsory licensing of journalists has been an important issue in this debate.<sup>88</sup>

Secondly, the Inter-American Court, when it comes to defining the context, i.e. "democratic society", within which the restrictions permitted under Article 13(2) must be interpreted, carries out a comparative analysis of Article 13 of the American Convention with Article 10 of the European Convention and Article 19 of the International Covenant.<sup>89</sup> This points to the factual universality of the human rights concepts included in the different instruments (and not only the instruments in question here).

<sup>85</sup> Annual Report of the Inter-American Court of Human Rights 1985, *ibid.*, p 46. Cf. also The Sunday Times judgment, *supra* ch. 1.2.3 (n. 86), para. 65.

<sup>86</sup> Cf. the two declarations attached to the, unanimously adopted, Advisory opinion, *supra* (n. 84), pp 52–54 and 62–65 respectively.

<sup>87</sup> *Ibid.*, p 32.

<sup>88</sup> See ch. 3.1.2.

<sup>89</sup> Annual Report of the Inter-American Court of Human Rights 1985, *supra* (n. 84).

Thirdly, the Inter-American Court actually quotes the practice of the European Court of Human Rights, notably The Sunday Times case and the Barthold case.<sup>90</sup> This shows that not only were the drafters of the American Convention inspired by its European equivalent, but the judges of the Inter-American Court also draw inspiration from the decisions of their European colleagues.

Paragraph 3 of Article 13 of the American Convention may be an example of its improvement upon the European Convention.<sup>91</sup> According to Article 13 para. 3:

“The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or implements or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

The “right of expression” presumably means the same as “freedom of expression” or rather “right to freedom of expression” according to the International Covenant and the European Convention.

The statement concerning indirect restrictions is unique to the American Convention and shows a great concern for freedom of expression and information. It also gives evidence of the fact that freedom of information is not seldom restricted by “indirect methods or means”, and gives examples of ways in which indirect restrictions are carried out. The paragraph explicitly mentions “abuse of *government or private* controls” (emphasis added) which also distinguishes it from the other human rights agreements, which never expressly acknowledge the possibility of interference or restriction on the part of private subjects.<sup>92</sup> In this way the American Convention takes into account the fact that it is not only against the public authorities that individuals may have to assert their rights and freedoms but also, and increasingly, against private entities. As we saw above this fact is also beginning to be recognized in the European context, at least as far as excessive concentrations in the mass media field are concerned.<sup>93</sup> The inclusion of “private controls” in

<sup>90</sup> Ibid., p 34; The Sunday Times judgment and the Barthold judgment, supra ch. 1.2.3 (n. 86).

<sup>91</sup> Cf. ch. 1.2.5 p 77.

<sup>92</sup> Cf. however Article 19(1) of the Covenant on freedom of opinion—“without interference”—compared with Article 10(1) of the European Convention—“without interference by public authority”.

<sup>93</sup> Cf. above ch. 1.2.3 pp 62–64.

the American Convention may also be interpreted as a safeguard against governments using private controls to restrict freedom of information.

The Inter-American Court said in the Schmidt case that the comparison it undertook of Article 13 with Article 10 of the European Convention and Article 19 of the Covenant clearly indicates that “the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum restrictions impeding the free circulation of ideas.”<sup>94</sup> The American Convention places “an extremely high value” on freedom of expression, according to the Court.<sup>95</sup>

In Article 13 para. 4 of the American Convention an exception is made to the seemingly absolute prohibition of prior censorship in para. 2:

“Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship, for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.”

Since it only regulates *access* to public entertainments and access by children and adolescents only, and thus not necessarily implies any changes in the *content* of these entertainments, this paragraph, although allowing censorship, does not seem to entail a serious threat to freedom of information.

Article 13 is concluded by para. 5 condemning, *inter alia*, propaganda for war:

“Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law.”

This paragraph is almost identical with Article 20(1) and (2) of the Covenant on Civil and Political Rights. The US has not ratified either the Covenant or the American Convention. Judging from its attitude especially to the paragraph on war propaganda during the preliminary debates on the Covenant, the US should also have been opposed to the

<sup>94</sup> Annual Report of the Inter-American Court of Human Rights 1985, *supra* (n. 84), p 35.

<sup>95</sup> *Ibid.*

insertion of Article 13(5) in the American Convention. In contrast to Article 20 of the Covenant which merely says that war propaganda and advocacy of hatred shall be "prohibited by law", the text of Article 13(5) of the American Convention goes one step further and says that they shall be "*considered as offences punishable by law*" (emphasis added).

Although the American Convention may be regarded as going further than any other human rights treaty in its protection of freedom of information, practical realities have counteracted a complete success. Firstly, the Latin and Central American states parties have not hitherto cared to observe the different provisions of the American Convention to any great extent. In some countries the situation is, however, improving. Secondly, the states party to the American Convention have not been as willing as their European counterparts to recognize the competence of the Inter-American Court of Human Rights; presently only 10 out of 20 states parties to the Convention have recognized the jurisdiction of the Court as binding.

Thirdly, with regard to freedom of information, the petitions concerning human rights violations reaching the Inter-American Commission and Court mostly concern crimes generally considered more serious than "mere" violations of freedom of information. Robertson aptly writes that the European organs, hitherto, have been lucky enough, with very rare exceptions, to be concerned with "the finer points of human rights law" whereas the Inter-American Commission has had to deal with problems of a different order: arbitrary arrests, systematic use of torture, hundreds of "disappeared persons", total absence of judicial remedies and other flagrant violations.<sup>96</sup>

Robertson also points out that since the officials populating the judiciary system of the American Convention are heavily loaded with work, perhaps comparatively lesser offences cannot expect as much attention as more serious ones.<sup>97</sup> Neither do the victims if they have been subjected to long periods of arbitrary detention including severe torture probably care so much about an additional violation of their right to freedom of information.

The case of ABC Color illustrates the harsher realities of Latin America. ABC Color was a Paraguayan newspaper which was simply

<sup>96</sup> Cf. Robertson, *op.cit.* ch. 1.2.5 (n. 177), pp 75-76.

<sup>97</sup> *Ibid.*, pp 61-62.

closed down for an undetermined time by the Paraguayan authorities and whose editor was detained and subsequently placed under house arrest.<sup>98</sup> Since Paraguay has not ratified the American Convention on Human Rights, the Commission based its resolution on the provisions contained in the American Declaration of the Rights and Duties of Man of 1948.<sup>99</sup>

The Commission stated that a reading of the resolution of the Paraguayan Ministry of the Interior which resulted in the closing of ABC Color “leads to the conclusion that the Government of Paraguay proceeded to suspend indefinitely the publication of the newspaper ... without any type of legal proceedings in which the accusations against that communications medium could be sustained and in which the representatives of that medium could exercise their right of defense.”<sup>100</sup> Therefore, the Commission declared that the Government of Paraguay had violated Articles IV (right to freedom of investigation, opinion, expression and dissemination) and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man.<sup>101</sup>

It is difficult to think of any more blatant or “extreme” violation of freedom of expression, as the Inter-American Court said in the Schmidt case mentioned earlier.<sup>102</sup> An extreme violation, for example the seizing or barring of publications, in the words of the Court both “violates the right of each individual to express himself” and “impairs the right of each person to be well informed, and thus affects one of the fundamental prerequisites of a democratic society.”<sup>103</sup> In fact, the Inter-American Court also rejected the Costa Rican law on compulsory licensing on these same grounds, although the Court had previously stated that the Costa Rican compulsory licensing regime did not fall into the category of extreme violation.<sup>104</sup> Other examples of extreme violations mentioned by the Court in the Schmidt case are prior censor-

<sup>98</sup> OAS, Annual Report of the Inter-American Commission on Human Rights 1983–1984, OEA/Ser.L/V/II.63, doc. 10, 24 September 1984, resolution No. 6/84, case No. 9250, May 17, 1984, pp 72–75. The house arrest was tried in another case.

<sup>99</sup> See e.g. *Basic Documents on Human Rights*, 2nd ed., Ed. by Ian Brownlie, 1981, p 381.

<sup>100</sup> Annual Report of the Inter-American Commission on Human Rights 1983–1984, supra (n. 98), p 74.

<sup>101</sup> Ibid.

<sup>102</sup> Cf. Annual Report of the Inter-American Court of Human Rights 1985, supra (n. 84), p 36.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.

ship and generally any procedure that subjects the expression or dissemination of information to government control.<sup>105</sup>

### **1.3.5 The African Charter on Human and Peoples' Rights**

In the African Charter Article 9 there is no limitation clause similar to the ones in the other human rights agreements. Instead there is the somewhat suspicious "clawback clause"<sup>106</sup> in para. 2 saying that the declared right of every individual to express and disseminate his opinions shall be exercised "within the law". No criteria are given for legitimate purposes of any potential restrictive laws, nor is it stated that these laws must be "necessary".

On the other hand the right to receive information under para. 1 of Article 9 is not at all qualified which would seem to imply that the African Charter affords this aspect of freedom of information, deemed very important by both the European and Inter-American Courts, better protection than the other human rights agreements. This presumption is, however, highly theoretical.

As was mentioned in chapter 1.2.6 the African Commission on Human and Peoples' Rights has received communications concerning the behaviour of states in relation to the provisions of the Charter, but the contents of these communications and the results of the deliberations in the Commission have not been made public.

As regards communications other than those of party states (Article 55), which are considered by the Commission if a simple majority of its members so decide, particular demands are made concerning their form. Some of the demands are traditional and correspond with similar demands made under the European and American Conventions. Two items in the African Charter are different, however. Article 56(3) of the Charter states that communications shall be considered by the Commission if they "are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity." This demand bears witness to the attitude of the signatory states towards complaining individuals or other non-state entities. It would seem difficult moreover to avoid insulting a state when invoking potentially serious human or peoples' rights crimes

<sup>105</sup> Ibid.

<sup>106</sup> Cf. ch. 1.2.6 (n. 202).

allegedly committed by that state.

The other demand unique to the African Charter is that communications must not be based “exclusively on news disseminated through the mass media” (Article 56(4)). If a person is supposed to be a victim of a violation of his human rights, in the sense of the European Convention at least, it is impossible that his complaint be made exclusively on the basis of news reports and consequently not on the basis of his own actual experiences. The African Charter does not seem to have as strict criteria as the European Convention for who can claim to be a victim of a violation of the Charter, otherwise the demand in Article 56(4) would be superfluous. Maybe Article 56(4) gives evidence of a scepticism on the part of the member states toward the mass media in general. Robertson and Merrills explain the rule in 56(4) by a wish on the part of the drafters to limit the opportunities for an *actio popularis*.<sup>107</sup>

<sup>107</sup> Robertson and Merrills, *Human Rights in the World*, 1989, pp 219–220.

## 2 Freedom of information called into question

### 2.1 Quantitative and qualitative imbalances in the international news flow

The effects of the rules on freedom of information accounted for in the foregoing chapters have been severely criticized by the Third World countries and the former Soviet bloc. The criticism has mostly concerned the international aspect of freedom of information—the freedom to seek, receive and transmit information and ideas *regardless of frontiers*. The free flow of information doctrine which imbues the existing international rules has, according to its critics, generated a situation characterized by serious imbalances.<sup>1</sup> These imbalances constitute the

<sup>1</sup> Cf. Unesco Gen. Conf., 16th Sess., 1970, Report of the Programme Commission, pp 109, 122; 17th Sess., 1972, Report of Commission IV, pp 109–110; 18th Sess., 1974, Report of Commission IV, pp 123–127; 19th Sess., 1976, Plenary Proceedings, pp 389, 450–451, 454–455; 20th Sess., 1978, Report of Commission IV, pp 141, 144–145; 21st Sess., 1980, Report of Commission IV, pp 138, 140, 165, 178; 22nd Sess., 1983, Report of Commission IV, pp 134–135, 138–139; 23rd Sess., 1985, Report of Commission IV, pp 191, 194–195, 200; 24th Sess., 1987, Report of Commission IV, p 153. Cf. also Unesco, (First) Medium-Term Plan (1977–1982), Doc. No. 19 C/4 Approved, p 299; Second Medium-Term Plan (1983–1989), Doc. No. 4 XC/4 Approved, p 94; Third Medium-Term Plan (1990–1995), Doc. No. 25 C/4 Approved, pp 99, 106 and res. 25 C/4/104, preambular para. 9 (a), p 116. See also, among many others, Addis, “International Propaganda and Developing Countries”, *Vanderbilt Journal of Transnational Law*, vol. 21, 1988, pp 491–548, passim; Attwood, “The Politics of Information”, *Political Communication and Persuasion*, vol. 1, 1982, p 325; Balle, “La Position du Tiers-Monde”, in *Société Française Pour le Droit International*, Colloque de Strasbourg: La Circulation des Informations et le Droit International, 1978, pp 58–60; Cate, “The First Amendment and the International ‘Free Flow’ of Information”, *Virginia Journal of International Law*, vol. 30, 1990, pp 377–381; Chen, “Human Rights and the Free Flow of Information”, in *Power and Policy in Quest of Law*, 1985, pp 251–252; Holzberg, “The New World Information Order: A Legal Framework for Debate”, *Case Western Reserve Journal of International Law*, vol. 14, 1982, p 405; Note, op. cit. ch. 1.2.1 (n. 28), 1986, p 108; Rao, “Information Imbalance: A Closer Look”, in *Crisis in International News: Policies and Prospects*, 1981, p 141.

root cause why the Third World, backed by the former Soviet bloc, has called the "old information order"—or disorder<sup>2</sup>—into question and has wanted to replace it with a "New World Information and Communication Order" (NWICO) based on different premises than the "old" one. Freedom and a free flow of information, for example, are obviously not values central to the proponents of a new information order.

The kind of information referred to by the advocates of a NWICO when they talk about imbalances in the international information flow is principally news. The new information order debate has accordingly centered around the activities of the news media, primarily the international news agencies.<sup>3</sup> It is argued by the NWICO advocates that the international flow of news is a "one-way flow" instead of what it should be—a "two-way flow". The purpose of the claims for a NWICO is in substance to rectify these imbalances, to attain a "balanced" flow of news and information. The two main roads of rectification envisaged by the proponents of a NWICO have been the normative and the practical.

The normative way—which is the most interesting one from a legal point of view—means the creation of new rules circumscribing the international freedom of information, which only benefits the developed countries to the detriment of the developing countries. The practical way means the strengthening of the Third World countries' own mass media infrastructures within the prevailing system of rules. This will have to take place basically by means of development aid for want of a total restructuring of the international economy. The efforts of the Third World countries and the former Soviet bloc to bring about a NWICO by different means and the results yielded by these efforts will be closely dealt with below.

The imbalances are of two different although related kinds: quantitative and qualitative imbalances.<sup>4</sup> Both the imbalance in quantity and of quality is derived principally from the dominance of the major Western international press agencies on the international news market distributing as they do approximately three-quarters of the news put out in the

<sup>2</sup> See Mankekar, *Whose Freedom? Whose Order? A Plea for a New International Information Order by Third World*, 1981, p 35.

<sup>3</sup> Cf. Aggarwala, "New International Information and Communication Order: Setting the Record Straight", *New York Law School Journal of International and Comparative Law*, vol. 4, 1982, p 11.

<sup>4</sup> Cf. Mankekar, *op.cit.* (n. 2), p 207; Martelanc, "A Global Communications Order?", *Review of International Affairs*, (Belgrade), vol. XXIX, No. 684, 1978, p 13.

world.<sup>5</sup> We shall start here with the quantitative imbalances.

The size of the figure concerning how large a share of the daily international news flow that is transmitted through the major Western news agencies varies somewhat from source to source. There is no doubt, however, that the figure should amount to at least three-fourths. At a debate in Programme Commission IV—Culture and Communication—at the twenty-second session of the Unesco General Conference in 1983, figures were given by some delegates to quantify the imbalances. Several affirmed, according to the records, that 80 per cent of information the world over was processed and disseminated by the four major Western press agencies; another put the proportion as high as 97 per cent.<sup>6</sup>

When correspondents from these agencies protest against their being denied visas and in this way kept out from certain countries, this has been understood by the advocates of a NWICO not as complaints about a lack of press freedom and other rights and freedoms in the “closed” countries, but as being in reality protests against the fact that the world-wide monopoly of these news agencies is not (yet) complete.<sup>7</sup>

The four news agencies held responsible for causing these serious imbalances are Reuters from Great Britain, Agence France-Presse (AFP) from France and United Press International (UPI) and Associated Press (AP) from the United States. These news agencies are sometimes collectively called the Big Four in the NWICO debate. The fifth among the most important international news agencies is Telegrafnoye Agentstvo Sovetskovo Soyuz (TASS) the former Soviet and nowadays Russian agency.<sup>8</sup> TASS, however, has been peripheral to the debate on unbalanced communication flows. It has not aroused as much dis-

<sup>5</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 141.

<sup>6</sup> Unesco Gen. Conf., 22nd Sess., 1983, Report of Commission IV, p 139. It is not completely clear what these delegates refer to by the term “information”. Since in the context of the NWICO debate what is referred to is usually news and since the delegates refer to the activities of the Western news agencies, the conclusion is near at hand that they mean “news” when they use the more general term “information”. Chen and Cate for example, say that 80 per cent of the “news flow” emanates from the Big Four (Chen, op.cit. (n. 1), p 252, Cate, op.cit. (n. 1), p 377).

<sup>7</sup> Cf. Bartolovic, “The Contemporary World, Underdeveloped Countries and Communication. In Favour of a New International Information Order”, *Socialist Thought and Practice*, vol. XIX, No. 3, 1979, p 56; Gauhar, “Free Flow of Information: Myths and Shibboleths”, *Third World Quarterly*, vol. 1, 1979, p 71.

<sup>8</sup> For a general account of the larger news agencies of the world, see Pinto, *La liberté d'information et d'opinion en droit international*, 1984, pp 332–379. As from 1 January 1992 TASS has changed its name into ITAR-TASS. ITAR stands for Informationoye Telegrafnoye Agentstvo Rossii.

content and irritation among the Third World nations as have the other, Western, "Big Four". This depends among other things on the fact that TASS has not constituted a major source of external information to the developing countries, i.e. they have not used the services of TASS to any great extent.<sup>9</sup> Consequently, when it comes to the role of the major news agencies in the current information order the four major Western agencies are the ones most in question.

The quantitative imbalance really signifies that a greater number of news items—in fact a superabundance of messages according to Third World spokesmen—flow from the advanced Western countries to the developing countries than vice versa and that as a consequence fewer news articles will eventually be published in the Western newspapers about the Third World than in the Third World papers about the Western world. This can also be expressed in terms of news flowing mainly from a few metropolitan centres to the underdeveloped periphery.

By the term "quantitative imbalance", then, the critics do not directly refer to the unbalanced situation as far as the news agencies themselves are concerned, i.e. that there are no big Third World news agencies to counterbalance the Western ones. But the fact that the Big Four are all Western is a factor that contributes to the imbalance in quantity of news items flowing to and from the Third World, according to the critics. Western news agencies are naturally more interested in their own region of the world than in the Third World. Only indirectly, however, does "quantitative imbalance" refer to the size of the news agencies themselves. Directly it refers to the volume of the news flow which means that, in principle, even if they by their size still dominated the world news traffic, the Western news agencies would be able to satisfy the demands concerning the quantitative imbalance by distributing a greater number of news items concerning the Third World relative to the news about the Western world.

The direction of the news flow from the West to the South also entails, according to the NWICO advocates, that the exchange of news between countries all belonging to the South becomes restricted. The international exchange among Southern countries is carried out by way

<sup>9</sup> Cf. Holzberg, *op.cit.* (n. 1), p 406; Mankekar, *op.cit.* (n. 2), p 41; *Foreign News in the Media: International Reporting in 29 Countries*, Ed. by Annabelle Sreberny-Mohammadi with Kaarle Nordenstreng, Robert Stevenson and Frank Ugboajah, *Unesco, Reports and Papers on Mass Communication*, No. 93, 1985, p 53.

of the major news agencies in the United States or Western Europe. Studying the Third World news occurring in Asia, Schramm notes that three out of four of all the stories of other Third World countries came from AFP, AP, Reuters or UPI.<sup>10</sup> This state of things is in general explained as one of many remnants of the colonial past of many developing countries when their international contacts took place primarily with the mother country in Western Europe.<sup>11</sup>

The central negative result of the imbalance in the volume of the news flow going South and North is, however, according to the complaints made by NWICO spokesmen, that the West does not get to know as much about the developing countries and their particular situation and problems as the developing countries hear and learn about the advanced countries. This is the fundamental quantitative angle from which the developing countries attack the existing information structure—for not letting their points of view have “sufficient or equitable access” to the international news flow, as it is usually put.<sup>12</sup> The next most important complaint then is that the countries of the South do not get to hear enough news about each other and each other’s problems.

The Third World countries try to remedy this, *inter alia*, by creating their own regional news agencies. The Third World countries regard having news agencies of their own through which they can exchange news about themselves among themselves as a good thing as such, quite understandably.<sup>13</sup> They also think that by creating news agencies of their own, and pools of news agencies like the Pool of Non-Aligned News Agencies,<sup>14</sup> they will be able to spread more news about the Third World to the Western world too.

Sometimes it is argued against the contentions of the developing countries that the Third World editors who decide what incoming news from the news agencies’ wires that shall be published, the so called “gate-keepers”, can select news originating from developing countries

<sup>10</sup> Schramm, “International News Wires and Third World News in Asia”, in *Crisis in International News: Policies and Prospects*, Ed. by Jim Richstad and Michael H. Anderson, 1981, p 204.

<sup>11</sup> Cf. Mankekar, *op.cit.* (n. 2), p 11; Cf. also Masmoudi, “The New World Information Order”, *Journal of Communication*, vol. 29, 1979, p 174.

<sup>12</sup> Cf. Masmoudi, *ibid.*, p 183; Righter, “World Communication Issues”, in *Crisis in International News: Policies and Prospects*, 1981, p 57.

<sup>13</sup> Cf. Unesco Gen. Conf., 17th Sess., 1972, Report of Commission IV, p 110; 18th Sess., 1974, Report of Commission IV, p 125; 19th Sess., 1976, Plenary Proceedings, p 454; twenty-third session, 1985, p 192.

<sup>14</sup> See further ch. 3.1.3.

instead of primarily selecting news from the advanced West. Moreover, since the customers of the major international news agencies in the Third World are usually governments or national, government controlled, news agencies this would seem to facilitate any "necessary" adjustments of the incoming news to fit the society and culture in question. Against this the developing countries argue that the selection is not a satisfactory one but is restricted since it is taken from an already limited agenda—an agenda provided by the major news agencies.

Moreover, it is argued by the Third World that the major news agencies because of their dominance have contributed to the socialization of news professionals by reinforcing certain understandings and beliefs as to what news really is, thereby helping to set the agenda in yet another way.<sup>15</sup>

Contrary to what one may have thought, it is shown in the study "Foreign News in the Media: International reporting in 29 Countries", carried out under the auspices of Unesco that the Western news agencies are only the second most important source of international news in the countries included in the survey coming after the home agency or own correspondent.<sup>16</sup> The countries included in the study were both developed and developing countries. This may explain the difference between the result of the Unesco study and Schramm's study quoted above, according to which three quarters of the news stories of other Third World countries occurring in Asia were taken from the Big Four. Another difference between Schramm's study and the Unesco study is that Schramm studied news items concerning Third World countries only whereas the Unesco study included international news in general concerning all countries.

The result of the Unesco study goes against the view that the Big Four completely dominate the international news flow, or, rather, that Big Four news completely dominate among the news items chosen from the international news flow. However, it is pointed out in the Unesco study that in the case of many news stories no source was mentioned at all in the local mass media and it was not certain whether the stories attributed to national news agencies actually originated from the natio-

15 Cf. *Foreign News in the Media: International Reporting in 29 Countries*, supra (n. 9), p. 53. Cf. also the discussion of "the editorial mind" in Gauhar, op.cit. (n. 7), pp. 66–67.

16 Cf. *Foreign News in the Media: International Reporting in 29 Countries*, ibid. Cf. also Stevenson and Cole, "Patterns of Foreign News", in *Foreign News and the New World Information Order*, Ed. by Robert L. Stevenson and Donald Lewis Shaw, 1984, p. 56.

nal agencies or had just been forwarded to them from the Big Four.<sup>17</sup> Schramm claims that the Third World countries get two-thirds of their foreign news from the Big Four.<sup>18</sup>

A number of investigations of the international news flow have been undertaken in addition to the study by Schramm and the Unesco study cited above. The results of the measurements of how many foreign news articles from different regions or countries that appear in the wire services and in different newspapers, in other countries, are not unambiguous and are invoked to support all sides in the debate on a NWICO.

It has not been shown conclusively, assuming at least in theory that an undisputed result could at all emerge from an investigation of such a controversial subject, that any clear-cut quantitative imbalance really exists in the international flow of news emanating from the major news agencies. Clear-cut quantitative imbalance would mean that the major Western news agencies carry a significantly larger amount of news items about the Western world than about the Third World. The only quantitative fact that everyone should be able to agree upon in this context is that the major news agencies are in fact Western and that the greater part of the international news flow is processed by these agencies.

However, if the number of countries or the size of the total population in the Western world and the Third World respectively are taken into account and the international news flow should reflect this, then there probably exists a quantitative imbalance in the international flow of news provided by the Big Four.

The possibility of *quantitative* imbalances in the international news flow has not been as controversial or as important an issue as the claim that the news flow is unbalanced *qualitatively*—from the point of view of content. It has been forcefully contended by the advocates of a NWICO that the Western news media single out the developing world for inaccurate, unfair or untrue coverage.<sup>19</sup> Some NWICO spokesmen are of the opinion that the domination of the international news flow by

<sup>17</sup> Cf. *Foreign News in the Media: International Reporting in 29 Countries*, *ibid.* Cf. also Weaver and Wilhoit, "Foreign News in the Western Agencies", in *Foreign News and the New World Information Order*, Ed. by Robert L. Stevenson and Donald Lewis Shaw, 1984, p 176.

<sup>18</sup> Schramm, 1981, *op. cit.* (n. 10), p 200.

<sup>19</sup> Cf. Stevenson and Gaddy, "'Bad News' and the Third World", in *Foreign News and the New World Information Order*, Ed. by Robert L. Stevenson and Donald Lewis Shaw, 1984, p 88; cf. also Aggarwala, *op. cit.* (n. 3), pp 11–14.

the Western news agencies and the ensuing distortion of the news reports is an evil just as serious as state censorship.<sup>20</sup>

Originally, the complaints concerning the imbalance in the international news flow were aimed primarily at the qualitative side of this imbalance. In Unesco's Medium-Term Plan for 1977–1982 it is said that a “balanced” flow of news is primarily a qualitative concept.<sup>21</sup> The qualitative complaint is regarded on the part of the Western countries as more ideological than the quantitative one. Because the qualitative complaints and the suggested means for the reversal of this imbalance have been so controversial the balance has over the years swung somewhat towards concerns of a quantitative nature on the part of the Third World. Or, at least, in later years qualitative complaints have tended not to be launched as often and as vehemently as before.

The principal qualitative fault impairing the current international news flow, according to the developing countries, is that when, at last, news is printed about these countries in the West, only sensational or negative news, such as news about natural catastrophes, military coups and wars is presented.<sup>22</sup> This is explained by some as simply reflecting a greater occurrence of violence and conflict in the Third World.<sup>23</sup> The Organization of African Unity (OAU) has summarized the Third World complaints by noting in a resolution, in 1981, “that part of the world press and of the mass information media persists in taking advantage of its privileged position on the international scene by disseminating *false* information and by placing a *wrong* interpretation on the aspirations of the recently liberated countries, their needs in all areas, the objectives of their sovereign governments, the obstacles to their development and to the assertion of their cultural identities” (emphasis added).<sup>24</sup>

The major finding of a survey of the foreign news occurring in all four of the big Western news agencies in the spring of 1979 carried out by Weaver and Wilhoit is that the Western news agencies consider politics to be the most newsworthy topic in news from all areas of the

<sup>20</sup> Cf. UN, GAOR, 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 36.

<sup>21</sup> Medium-Term Plan (1977–1982), Doc. No. 19 C/4 Approved, p 297.

<sup>22</sup> Cf., among many others, Bartolovic, op. cit. (n. 7), p 56.

<sup>23</sup> Cf. Weaver and Wilhoit, op. cit. (n. 17), p 184.

<sup>24</sup> OAU, Resolutions and Recommendations Adopted by the OAU Council of Ministers, vol. III, Addis Ababa, 1987, Resolution on the New International Information Order, No. 897, p 455, preamble.

world except Africa where military matters prevail.<sup>25</sup> Close behind politics, according to Weaver and Wilhoit's study, are military, economic and crime news, regardless of the destination of the wire services.<sup>26</sup>

It is clear that political and military matters make up the bulk of Western wire service reporting.<sup>27</sup> This reporting leaves comparatively little space for cultural, religious, scientific and medical news and news on social problems and development issues.<sup>28</sup> It is also equally clear, however, Weaver and Wilhoit say, that the wires do not devote quite as much coverage to natural disasters and crime as has been claimed by some critics.<sup>29</sup> The overall evidence would seem to suggest that the Third World does not get a very different kind of coverage than the rest of the world, except for the overweight of military news originating from Africa. This lends only partial support to the allegation that the Western news agencies are primarily or only interested in "coups and earthquakes" in the Third World—African coups, but not natural disasters, apparently attract particular interest.

The specific data on the foreign news coverage of AP and UPI geared to media in the U.S., however, supports the claim that Western coverage of the Third World countries tends to concentrate on conflicts and crises: "The largest differences we found between wire service coverage of the more-developed and less-developed countries were on the topics of internal conflict or crisis, and armed conflict."<sup>30</sup> This means that the tendency to report on these issues was significantly more pronounced in relation to less-developed countries. In relation to the more-developed countries there was a tendency to report comparatively more about "soft" items like religion, so called human interest stories and odd happenings.<sup>31</sup> As far as crime reporting was concerned, political crimes were significantly more likely to be reported from the less-developed countries whereas non-political crimes were significantly more likely to be reported from the more-developed.<sup>32</sup>

<sup>25</sup> Weaver and Wilhoit, *op.cit.* (n. 17), p 173.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, p 162, 181.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*, p 162.

<sup>30</sup> *Ibid.*, p 183.

<sup>31</sup> *Ibid.*, p 181.

<sup>32</sup> *Ibid.*

On the whole, however, Weaver and Wilhoit write, the bulk of the regional wire service coverage for *both* more-developed *and* less-developed countries was about diplomatic and political activity between states, internal conflict or crisis, armed conflict or the threat of it, peace moves and negotiations, elections and campaigns, crime, human interest and odd happenings.<sup>33</sup> “In short, the wire services concentrated mostly on ‘official’ news, that which flows mainly from government and military sources.”<sup>34</sup>

Weaver and Wilhoit’s study does not support the claim that the Third World receives less coverage than does the developed world: “In fact, there were more foreign news stories from the less-developed countries than from the more-developed countries in both the AP and UPI regional wires, and these stories were, on the average, longer than those from the more-developed countries.”<sup>35</sup>

In summary, according to Weaver and Wilhoit’s study of the U.S. regional wire services, there is no quantitative imbalance in the international news flow (if not put in relation to number of countries or total population) and largely the same categories of news are reported on from both the developed and the developing countries, but within these categories there exist in fact qualitative imbalances as to where the emphasis is put by the U.S. news agencies. However, on the whole the similarities may nevertheless seem greater than the differences in the way AP and UPI report on the two worlds: “... even in the more-developed countries, the bulk of the wire service stories we analyzed concentrated on political and military activity and crime.”<sup>36</sup>

Another result of Weaver and Wilhoit’s study is that there is evidence that the Big Four Western news agencies are indeed agenda-setters for the various national press systems, except in Western Europe where there appears to be much more “soft” news (dealing with cultural, scientific, and human interest subjects) than is carried by the Western wires.<sup>37</sup>

Potter has made an empirical study of the occurrence of international news in “prestige U.S. newspapers” from the Western, Eastern and

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid., p 183.

<sup>36</sup> Ibid., pp 183–184.

<sup>37</sup> Ibid., p 173.

Third Worlds respectively. Thus Potter studied what news had made it to the newspaper pages whereas Weaver and Wilhoit studied the news items occurring in the services of the international news agencies, which may or may not be chosen for publication. Potter's findings confirm the results of Weaver and Wilhoit's study concerning the U.S. news agencies. He concludes that Third World and Eastern news coverage is much more likely to be sensational than is the Western news coverage.<sup>38</sup> The sensational news category includes natural disasters, accidents, crime and military or war news.<sup>39</sup> The coverage of the Western events is more likely to display a balance between government stories (about the normal workings of a government, the executives, legislators and judges) and sensational stories, writes Potter.<sup>40</sup>

All in all the proportion of international news coverage in the newspapers Potter studied is "fairly large" (44 per cent of the newsworld) and the proportion of Third World coverage is growing, according to Potter (around 40 per cent of the stories included referred to a Third World country, exclusively or in conjunction with a country from another "world", in 1983), while coverage of the East remains at a low level.<sup>41</sup> The revolutions in Eastern Europe in 1989 have most certainly altered this tendency concerning the coverage of the East.

The focus of the Western news agencies and other mass media on negative and sensational news thus tends to be more pronounced as regards the Third World than the Western world itself. However, complaints over too much negative and sensational news in the news flow are made also within the Western world.<sup>42</sup> These complaints have never, however, been serious enough to really question the way the news transmission generally works. The concentration on the part of the mass media on such events which may be perceived as negative seems to be an in-built tendency and gives evidence of a particular journalistic and editorial practice, global in reach, rather than a conspiracy against the Third World.<sup>43</sup> This journalistic practice may be discussed, cer-

<sup>38</sup> Cf. Potter, "News From Three Worlds in Prestige U.S. Newspapers", *Journalism Quarterly*, 1987, p 276.

<sup>39</sup> *Ibid.*, p 75.

<sup>40</sup> *Ibid.*, p 276.

<sup>41</sup> *Ibid.* The corresponding figure for the Western world was 70 per cent, i.e. reports of a Western country alone or in conjunction with a country from one of the other two worlds.

<sup>42</sup> Cf. Eek already in 1953, op. cit. ch. 1.1.2 (n. 9), pp 47-50.

<sup>43</sup> Addis, however, regards Western reporting as "structural propaganda" (carried out by the media

tainly, but it could be argued on the part of the Western world against the Third World allegations of negative reporting that this question is better discussed alone, ignoring the implied conflict between the developed and developing worlds.

An interesting result in this context of the Unesco study of the international reporting in 29 countries was that although the countries included were very different from each other politically and in respect of level and orientation of development, their media systems all selected the same types of news in their international news reporting.<sup>44</sup> This was particularly evident as concerns the attention given to political news, domestic and international. There was a clear emphasis on political news in all the media systems studied. The second and third largest categories of international topics reported on by the national mass media were military matters and economics and the fourth was crime news (just as in Weaver and Wilhoit's study of the four major Western news agencies).<sup>45</sup> In the Unesco study the tendency of the respective national mass media only to report on the Third World in terms of tension and crisis was also recognized.<sup>46</sup>

Concerning "negative reporting" it should be added, in line with the general Third World complaints, that in his analysis of the American press coverage of the US withdrawal from Unesco, Giffard finds that the American press showed a systematic bias against Unesco and in favour of the withdrawal.<sup>47</sup> The coverage was thus highly negative (of Unesco) and highly unbalanced, according to Giffard. Giffard also found that the coverage of the US withdrawal by the Big Four international news agencies reflected the orientation of Western media and governments.<sup>48</sup>

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and not by states) directed against the Third World which is the "most effective type of propaganda" and "can result in the structural negation of self-determination of some communities" (Addis, op.cit. (n. 1), pp 516–517). Addis moreover defines propaganda as "a systematic manipulation of symbols that is structurally selective and one-sided or intentionally false, and which has a desired outcome or functional consequence of undermining the political and socio-cultural institutions of a community or a nation, either overtly or covertly" (ibid., p 516). By means of this definition Addis can, and does, condemn practically all Western news reporting as propaganda and then propose changes in the international legal system with the prohibition in Article 20(1) of the Covenant on Civil and Political Rights as pseudo-legal support underpinning his claim.

<sup>44</sup> Foreign News in the Media: International Reporting in 29 Countries, op. cit. (n. 9), p 52.

<sup>45</sup> Ibid., p 45. See also above (n. 26).

<sup>46</sup> Ibid., p 52.

<sup>47</sup> Cf. Giffard, *Unesco and the Media*, 1989, pp 275–276.

<sup>48</sup> Ibid.

On the part of the Third World it is held, furthermore, that not only are certain negative news items chosen from the Third World but the presentation of the Third World is filtered through the preconceived and prejudicial notions of the Western reporters. From this cultural bias it follows that these reporters, according to the Third World spokesmen, consciously or unconsciously give a distorted and untrue picture of the events taking place in the developing countries. In addition, as the Western reporters are primarily concerned with satisfying their home audiences they do not cover events that the developing country in question may consider important if they do not interest Western readers. The reporters from the big Western news agencies are allegedly applying standards and news values that do not meet the needs of the societies covered.<sup>49</sup> The former Minister of Information and Broadcasting of Tanzania, Isaac Sepetu, has said on behalf of the Non-Aligned Countries that their aim with a NWICO is not to limit the flow of information but rather to regulate it and "give it an equal national perspectiveness, values, character and identity in accordance with the country of origin."<sup>50</sup>

The true or accurate picture, i.e. the one which is in accordance with the developing countries' own picture of themselves, their problems and above all their successes, is pushed aside for the benefit of the prejudicial Western one. As one delegate, probably in favour of a NWICO, at the Unesco General Conference in 1978 tellingly declared: "Press freedom does not necessarily mean freedom to disinform, distort and interfere in the affairs of other states."<sup>51</sup> In 1990 the Minister of Information of Zimbabwe made a similar statement, although only concerning the national news distribution in Zimbabwe: ".../ while the media must be completely free to 'truly' inform, educate and entertain the people, it did not have 'the freedom to misinform or mislead.'"<sup>52</sup>

The same view, on the international level again, can also be

<sup>49</sup> Cf. Holzberg, op. cit. (n. 1), p 407. Cf also Masmoudi, "The New World Information Order", op. cit. (n. 11), pp 174-75; Fernández, "6,000 Words for Sixty Millions—The South-North Flow of News", *Vierteljahresberichte. Probleme der Entwicklungsländer*, Nr. 85, 1981, p 281.

<sup>50</sup> Sepetu, "Toward a New Information Order", in *Toward a New Information Order: Consequences for Development Policy*, Ed. by Dieter Bielenstein, 1979, p 63.

<sup>51</sup> Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 146.

<sup>52</sup> Statement made in an interview in the Zimbabwean daily *The Herald* on 30 April 1990, quoted by Davidson, *Democracy and Development in Zimbabwe. The State of Democracy and Human Rights, 1988-1991*, Swedish International Development Authority (SIDA), 1991, unpublished paper, pp 27-28.

expressed in this way: "The intensification of conflicts and the sowing of resentment by reporters and commentators who are unscrupulous, opinionated and ignorant of the situations, characteristics and certainly the history and geography of other peoples are evils which weaken powerful information systems and convert them into instruments of disinformation or premeditated silence, with which the developing countries are forced to contend in their efforts to achieve their own economic, social and cultural improvement."<sup>53</sup> Or, as one delegation to the UN Committee on Information put it in 1988: "... historically the guise of freedom of information had been used as a tool to aggravate tensions between nations, to promote war, escalate attacks on developing countries and declare war on national liberation movements, portraying their struggle as terrorism."<sup>54</sup>

Since the Western news reports concerning the Third World countries are necessarily filtered through Western conceptions and "preconceived notions", the qualitative imbalance characterizing the international news flow would not seem to be rectified, from a Third World point of view, by simply augmenting the number of news items concerning the Third World—the quantitative imbalance would be rectified but not the qualitative one. The only way of really rectifying the international imbalance would seem to be to have Third World journalists reporting about the Third World and these journalists should work for Third World news agencies or newspapers. The journalists should not apply the Western style of reporting, but some other one not focussing on negative news. The next best solution, from a Third World point of view, would be if the Western reporters and publishers stopped concentrating on negative news in their journalistic practices. It should be added that most likely, the Third World government standpoint does not always coincide with the Third World journalist's or publisher's.<sup>55</sup>

The former Soviet bloc has supported the Third World complaints concerning the quantitative and qualitative imbalances in the international flow of news. Often their arguments have been identical. For their own part, however, the Soviet bloc spokesmen have generally concen-

<sup>53</sup> UN, GAOR, 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 36.

<sup>54</sup> UN, GAOR, 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 9.

<sup>55</sup> Cf. Balle, *op. cit.* (n. 1), pp 62–63.

trated on the imbalance in quality. They have turned against what they have perceived as the aggressive and war propagandistic character of the Western reporting which they have maintained is a threat against peace and international understanding. During discussions on the NWICO in the UN Committee on Information in 1985 'some delegations', who sound like former Soviet bloc delegations, labelled the activities of the media of "some countries" (i.e. some Western countries and notably the United States) as "*psychological warfare*, trying to justify acceleration of the arms race and its extension into outer space and preparing peoples for the possibility of war (emphasis added)."<sup>56</sup> The former Soviet representatives have also talked about the "true" and "objective" news that they would like to see.

The former Soviet bloc states have emphasized the journalists' responsibility for the maintenance, or creation, of peaceful international relations.<sup>57</sup> They have also turned against an alleged tendency of Western news agencies to interfere in the internal affairs of states. So, whereas the Third World countries above all have been concerned with the distorted view which is transmitted of their cultures and development efforts, the former Soviet bloc, when arguing in favour of a NWICO, has focussed on the general international climate which is, or has been, damaged by the Western reporting and the present 'laissez-faire' attitude of the existing international rules on freedom of information.

Another factor which may affect the quantitative as well as the qualitative imbalances in the international news flow is the imbalance in technical equipment. The Third World advocates of a NWICO vehemently turn against the fact that the technical equipment used for news transmission and dissemination by the Third World countries themselves and the technical expertise are foreign-controlled or supplied.<sup>58</sup> This has the disadvantage of creating a dependence on the part of the developing countries on the developed ones which may be used by the developed countries as a means of pressure, *inter alia*, regarding the

<sup>56</sup> UN, GAOR, 40th Sess. 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 13. See also Grachev and Yermoshkin, *A New Information Order or Psychological Warfare?*, 1984.

<sup>57</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 142; 23rd Sess., 1985, Report of Commission IV, p 190.

<sup>58</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 147; UN, GAOR, 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 46. Cf. also Holzberg, *op.cit.* (n. 1), p 405.

content of the news gathered and disseminated in and by the developing countries.

The fact that the technical equipment is supplied by the Western countries also means that it is not adapted to the technically less advanced local market. This reinforces the dependence of the developing countries on the developed ones because the developing countries themselves lack the knowledge and hence the ability to fully use the high technology products to their own best advantage.

Sometimes the developing countries make the apparently opposite complaint when they claim that the developed countries supply outdated technical equipment that the developed countries themselves no longer have any use for. This less advanced equipment may be easier for the developing countries to use but if they wish to keep up with the rapid development of international communication and information exchange in general they also have to keep up with the latest developments in communications technology.

On the other hand, it has been pointed out by some NWICO spokesmen that technical development alone of the mass media infrastructure in the Third World is not sufficient: "The developing and non-aligned countries welcomed the proposal that they be helped to develop their own mass media, but only provided this did not mean equipping them the better to receive the kind of information now disseminated. /.../ They wanted the principle of responsible, correct information to be disseminated to their countries and about their countries to other parts of the world."<sup>59</sup> At a symposium in Prague in 1982 concerning a new international information order, sponsored by the journal *World Marxist Review*, it was noted that "it is illusory to hope to resolve the information problem purely by financial and technical means, with assistance from imperialist states."<sup>60</sup>

<sup>59</sup> Unesco, Summary of Interventions Made in Programme Commission III of the Nineteenth Session of the General Conference, 1976, Doc. No. CC.77/WS/21, April 1977, (hereafter cited as Unesco, Summary of Interventions, 1976), statement by the delegate of Yugoslavia, pp 17-18. Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, p 138; Osolnik, "The Objectives and Principles of a New International Order in the Field of Information", *Review of International Affairs*, (Belgrade), vol. XXX, No. 711, 1979, p 13.

<sup>60</sup> *World Marxist Review*, "On the way to a new international information order. The Communist view of the struggle to democratize information", vol. 25, 1982, Exchange of views, p 43. Among other participants at the Symposium were the dean of the Department of Journalism at the Moscow State University, Yassen Zassoursky, and the Deputy Chairman of the USSR Commission for Unesco, Yuri Kashlev. Kashlev was also head of the Soviet delegation to the CSCE follow-up conference in Vienna 1986-1989.

## 2.2 Arguments for and against a NWICO

The arguments which have been invoked for and against a NWICO over the years are numerous and of many different kinds depending on the perspective of the observer. The immediate background to the debate is the present character of the international news flow, but since the idea of a NWICO has bearing upon both national and international circumstances, the arguments used in the debate have not stayed exclusively on the international level.

Although a NWICO would certainly have important legal implications, the legal aspects of a NWICO, are seldom debated alone. This has to do, *inter alia*, with the fact that matters related to the possibly stricter regulation of the international flow of news and information are already highly controversial from a political point of view. For this reason the debates often stay on the political level and the discussion does not go into legal details. Another reason is that the NWICO advocates have not been overly specific in spelling out in legal terms what they actually mean by a *new* world information and communication order.<sup>1</sup>

When the NWICO question is debated from the point of view of international law, however, the human right to freedom of information constitutes the focus of attention, flanked by state sovereignty and non-interference in the internal affairs of states.

One legal argument which has been invoked by the Third World in support of a NWICO, is that in order for the citizens of the Third World to be able to exercise their right to freedom of information they must have the necessary means to so do.<sup>2</sup> Much had been said about human rights in the NWICO discussion as the delegate of Niger pointed out at Unesco in 1976, but only those who had the means could enjoy them.<sup>3</sup>

<sup>1</sup> Generally the demands made in the name of a NWICO remain "somewhat elusive and uncertain", as Chen writes (Chen, op.cit. ch. 2.1 (n. 1), p 254). One observer, unique in this respect, has in fact defined what he means by "order" in the NWICO context: Osolnik writes that "order" means that the new international system of communication should not develop spontaneously and exclusively under the influence of certain separate interests, most particularly financial and commercial ones, which do not conform to the common aims and values of the entire international community. It should be understood as a system of relations which are not accidental, but are being promoted with a particular purpose in mind by way of agreement and decision-making by equal partners (Osolnik, op. cit. ch. 2.1 (n. 59), p 14).

<sup>2</sup> Cf. Unesco Gen. Conf., 18th Sess., 1974, Report of Commission IV, pp 125, 127; 21st Sess., 1980, Report of Commission IV, p 178; UN, GAOR, 43rd Sess., 1988, Report of the Committee on Information, Doc. No. A/43/21, p 9.

<sup>3</sup> Unesco, Summary of Interventions, 1976, statement by Niger, p 31.

In reality the right to freedom of information, among other formal civil and political rights, is meaningless or fictitious if the factual conditions are such that it is impossible or next to impossible to exercise them, according to the Third World NWICO advocates.

There is nothing in principle, according to the Third World spokesmen for a NWICO, which should stop governments from involving themselves on a large scale in the field of communications in order to provide the necessary prerequisites, in the form of communications media, for the exercise of the freedom of information. In fact, according to this view, large-scale government involvement may be the best way or the only way of securing the citizens of the Third World the right to freedom of information.<sup>4</sup> The possible tension between the power of the government and the rights of the individual citizen is overlooked.

In practice, this has meant extensive government ownership and/or control of the Third World mass media. The delegate of Guyana to the Unesco General Conference in 1976 put it this way: "... the creation of a mass media system that would serve the aspirations of the developing countries and permit meaningful exchanges among them should not be left to chance or to foreign profit-oriented interests. Such a system was possible only on the basis of government initiatives, ownership and direction."<sup>5</sup> But even if governments are allowed to become extensively involved in the communications field, in the eyes of the Third World NWICO advocates, they have not generally succeeded, however, in building up efficient mass media infrastructures because of the lack of national economic and technical resources.

Also, involvement on the part of the government, not only to build up and run mass communications media, but in the form of interference with the contents of the general news flow in order to make it more "balanced" in a qualitative sense has been viewed as something fully acceptable and presumably lawful by the Third World proponents of a NWICO. Perhaps this is supposed to serve the purpose of securing a right of the individual citizens to receive "balanced" information.<sup>6</sup> Some authors go one step further and claim that in the eyes of the NWICO advocates, freedom of information has lost its character of

<sup>4</sup> Cf. Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, p 179.

<sup>5</sup> Unesco, Summary of Interventions, 1976, statement by Guyana, p 29.

<sup>6</sup> Cf. the emphasis of the European Commission and Court of Human Rights on the right of the public to receive "pluralist" information, *supra* ch. 1.2.3.

being worth protecting in itself and has come to be regarded as a means, a political instrument at the disposal of the State, to reach the "guided emancipation" (l'émancipation 'orientée') of the citizens—it has become a kind of "international social right".<sup>7</sup>

Since the international rules on freedom of information, prescribing a free international flow of news and information, do not take the interests of the Third World countries into account, but only benefit the affluent Western countries, it has also been argued on the part of the Third World NWICO advocates that the international law in this field should be changed. In its most extreme form this view sees the law as conserving the unjust relationship in the information sphere between North and South making change impossible if the law is not changed. Thus, the law should, at least according to some participants in the NWICO debate, be reformulated in order to counteract the injustices and help the developing countries assert themselves in relation to the developed ones in the information field.<sup>8</sup>

On the part of the Western world it is argued that human rights have an independent value more or less irrespective of the factual circumstances at a given moment. It is argued further that the right to freedom of information as well as the other civil and political rights, even if they sometimes seem only formal, are a guarantee of democratic government, in the liberal sense, which is also considered to be something valuable in itself. Although Western observers may realize that the international rules concerning freedom of information do benefit their interests and in that sense can be labelled unjust, both in the sense that only individuals in the developed world can fully exercise their right to freedom of information and that only mass media companies in the Western world can make use of the free flow of information regardless of frontiers, since only they can sell news and other programmes on the international market, they do not consider that the rules as such should be changed. It is the reality in the Third World which should be changed (however through minimal government involvement), not the rules which are good as they are, even if sometimes rather theoretical.

The Western world, moreover, considers that human rights exist to

<sup>7</sup> Cf. Sur, *op.cit.* ch. 1.2.2.2 (n. 65), p 50; Strozzi, *op.cit.* ch. 1.2.1 (n. 11), p 992.

<sup>8</sup> Cf. Condorelli, "The New International Information Order and the Law of Nations: Prospects and Problems", *The Italian Yearbook of International Law*, vol. V, 1980–1981, p 138, concerning the "legal optimism" of the developing countries.

the benefit of individual citizens whereas the countries of the Third World (and formerly the Soviet bloc) generally put equal or more emphasis on the human rights of the collective.<sup>9</sup> The collectivity in question as far as international freedom of information is concerned is the country or the state, although the term “people” is often used instead. Through government involvement and a NWICO the Third World countries would, in their own opinion, be able to exercise their “human right” to freedom of information in the international arena.<sup>10</sup> As Chen writes, the claims made by those advocating a NWICO are basically claims made in the name of the nation-state, not claims in the name of the individual.<sup>11</sup> This is indeed a very important aspect of the NWICO debate.

Expressions such as “the right of peoples to inform and be informed”<sup>12</sup> and “the peoples’ right to seek, receive and impart information”<sup>13</sup> have been used in the debates. In the quoted instances these expressions were used by the then Chairman of the UN Committee on Information in his speeches opening the two sessions in question of the Committee.

The Western counter-argument thus is that the individual human right to freedom of information is nothing but individual and that the purpose of human rights is basically to protect individuals against the government and the public authorities. Therefore any government intervention in the communications field, however benign it may appear, is looked upon with scepticism.<sup>14</sup> This applies particularly to interference,

<sup>9</sup> Cf. Howard, “Evaluating Human Rights in Africa: Some Problems of Implicit Comparisons”, *HRQ*, vol. 6, 1984, pp 160–179; Cobbah, “African Values and the Human Rights Debate”, *HRQ*, vol. 9, 1987, pp 309–331; Kodjo, “The African Charter on Human and Peoples’ Rights”, 11 *HRLJ* 1990, p 278; Nguéma, “Human Rights Perspectives in Africa”, 11 *HRLJ* 1990, pp 261–271; Note, “A New International Information Order: The Developing World and the Free Flow of Information Controversy”, *Syracuse Journal of International Law and Commerce*, vol. 8, 1980, pp 263–264. Collective “rights of peoples” are sometimes called the third generation of human rights, following the first generation of civil and political and the second generation of economic, social and cultural individual human rights (cf. for example Condorelli, *ibid.*, pp 131–136).

<sup>10</sup> Cf. Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, pp 140–141, 179; 23rd Sess., 1985, Report of Commission IV, p 200. Cf. also, for example, Strozzi, *op cit.* ch. 1.2.1 (n. 11), pp 960, 993. For a critique of the idea of “human rights” of states, see Donnelly, *Universal Human Rights in Theory and Practice*, 1989, ch. 8, “Human Rights, Group Rights and Cultural Rights”, pp 143–160.

<sup>11</sup> Chen, 1985, *op.cit.* ch. 2.1 (n. 1), p 255.

<sup>12</sup> UN, GAOR, 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 46.

<sup>13</sup> UN, GAOR, 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 35.

<sup>14</sup> Cf. Unesco Gen. Conf., 18th Sess., 1974, Report of Commission IV, p 127; 19th Sess., 1976,

for example in the form of "balancing", with the contents of the flow of news and information. The view expressed by one observer that the real conflict regarding the issue of a NWICO has centered around governmental control over information is no doubt correct.<sup>15</sup>

One of the main arguments put forward by the United States against a NWICO is that it would be in direct violation of the values enshrined in the First Amendment to the United States constitution which guarantees the free flow of information and in fact goes further in this respect than most other comparable statutes in the other countries of the West.<sup>16</sup> The defence of the United States First Amendment values is one of the most important thrusts of United States foreign policy, according to Elliott Abrams, Assistant Secretary of International Organization Affairs at the Department of State when this statement was made, and one on which all elements of the United States government and society are united.<sup>17</sup> There are observers, however, who call the allegedly absolute protection of the freedom of expression under the First Amendment into question.<sup>18</sup>

One reason why both the former Soviet Union and the Third World put the issue of a NWICO on the agenda of Unesco on the whole may be, according to certain Western observers, that an unlimited discussion carried on in a serious way in Unesco over a period of time about the issue of the freedom of the press could create a situation in which it would inevitably be assumed that the freedom of the press is a negotiable issue.<sup>19</sup> A speaker at the General Conference in 1985, critical of the NWICO idea and of the fact that so much time has been spent on discussing this issue at Unesco, said that "the Organization should not spend its time seeking compromises regarding basic principles expres-

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Plenary Proceedings, pp 458-459; 20th Sess., 1978, Report of Commission IV, pp 142, 145; 21st Sess., 1980, Report of Commission IV, pp 166, 179, 182; 23rd Sess., 1985, Report of Commission IV, pp 195, 200; 24th Sess., 1987, Report of Commission IV, p 153. Cf., however, ch. 1.2.3 pp 62-64 concerning the view of Cohen-Jonathan that the government has a duty under the European Convention on Human Rights to intervene under certain circumstances.

<sup>15</sup> Farley, "Conflicts over Government Control of Information—the United States and Unesco", *Tulane Law Review*, vol. 59, 1985, p 1074.

<sup>16</sup> Cf. Kelly, "Access Denied: The Politics of Press Censorship", in *International News. Freedom Under Attack*, Ed. by Dante B. Fascell, 1979, p 293.

<sup>17</sup> *Department of State Bulletin*, Vol. 81 No. 2055, 1981, statement by Abrams, 1981, p 67.

<sup>18</sup> Cf. Cate, op.cit. ch. 2.1 (n. 1), passim.; Comment, "The New World Information Order", *Texas International Law Journal*, vol. 18, 1983, pp 588-593.

<sup>19</sup> *Issues in International Information*, vol. II, 1981, pp 23-24, statement by Philip Power, and p 34, statement by Frank Shakespear.

sed in the United Nations Charter.”<sup>20</sup>

On the international level legal regulation is one possible mechanism by which the goal of a balanced international flow of information could be reached. Legal regulation was much wanted at the outset of the NWICO debate in the 1970s. The view has been put forward that the “free flow” of information across borders should take place “in accordance with appropriate agreements between states”.<sup>21</sup> Perhaps the easiest aspect, from a purely theoretical point of view, of the news flow to regulate through international agreement would be the qualitative (compared with the quantitative), i.e. by laying down guidelines for the content of the news in the name of accurate reporting and friendly international relations. So far, however, it has been impossible to convince the Western world of the merits of an agreement on international news content regulation.<sup>22</sup>

Theoretically, a combination of a quantitative and qualitative agreement on the international news flow could be an agreement saying that the big Western news agencies must devote a certain quota of their total news volume—considering both number and length of the stories—to the Third World. The agreement could then say what standards of content that would have to be met by the news agencies in their Third World reporting. Furthermore, for such an agreement to be effective it should be made sure that the national mass media of the Western world actually use a certain quota of the reports of the news agencies on the Third World. Apart from being impossible to realize in practice such an agreement would also entail large-scale government interference in the international flow of information and conflict with the human right to freedom of information regardless of frontiers. Another conceivable but not very realistic agreement could imply that the Western mass media only use news items from Third World news agencies as far as news from the Third World is concerned.<sup>23</sup>

What the NWICO advocates did succeed in was to secure the Unesco

<sup>20</sup> Unesco Gen. Conf., 23rd Sess., 1985, Report of Commission IV, p 192.

<sup>21</sup> UN, GAOR, 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 7.

<sup>22</sup> Cf. however the European Convention on Transfrontier Television of 1989, *supra* ch. 1.2.3 (n. 90), Article 7 (3): “The broadcaster shall ensure that news fairly presents facts and events and encourages the free formation of opinions.”

<sup>23</sup> Something of that kind, but not as far-reaching, was proposed by one delegation in the UN Committee on Information in 1991 (UN, GAOR, 46th Sess., 1991, Suppl. No. 21, Doc. No. A/46/21, p 8).

Mass Media Declaration, the contents and impact of which will be dealt with later.<sup>24</sup> The crucial importance of a Declaration on the mass media in rectifying the imbalances in the international news flow, the qualitative imbalance in particular, has been stressed repeatedly in Unesco General Conference debates.<sup>25</sup>

Rectifying the quantitative—and perhaps qualitative—imbalances by helping the Third World countries build up better communication infrastructures of their own can raise no legal, or other, counter-argument of principle at all, on the assumption that the resulting mass media are not all government owned and/or controlled. This is why economic and technical assistance to build up communication infrastructures is the most important part of the original demands for a NWICO left in the beginning of the 1990s.

According to the former Soviet international law doctrine, state sovereignty was strongly emphasized.<sup>26</sup> This can and has been used as a legal argument justifying state control of information flows.<sup>27</sup> Also the Third World countries have widely used the state sovereignty argument in this way in the NWICO debate.

The state sovereignty argument becomes all the more potent if individual human rights are given a subordinate position in the international, and internal, legal hierarchy, which so far has been the case both in Soviet and Third World doctrine.<sup>28</sup> Then, in cases where conflicts between these two principles occur, individual human rights and freedoms will always lose the competition with state sovereignty. It should be added that according to the former Soviet legal doctrine above all, there was no competition or conflict between the individual and the

<sup>24</sup> See ch. 3.2.

<sup>25</sup> Cf. Unesco Gen.Conf., 17th Sess., 1972, Report of Commission IV, p 122; 18th Sess., 1974, Report of Commission IV, pp 124, 127; 19th Sess., 1976, Plenary Proceedings, pp 448, 450, 454; 21st Sess., 1980, Report of Commission IV, pp 188–189.

<sup>26</sup> As far as can be judged this doctrine has been reconsidered.

<sup>27</sup> Cf. Shevtsova, "Regulation of Mass Information by International Law", *Soviet Law and Government* (a journal of translations), vol. 19, 1980, pp 54–55.

<sup>28</sup> Concerning the Soviet doctrine cf. Dean, "Beyond Helsinki: The Soviet View of Human Rights in International Law", *Virginia Journal of International Law*, vol. 21, 1980, pp 55–95; Dimitrijevic, op.cit. ch. 1.2.1 (n. 9), pp 65–69; Kartashkin, "The Socialist Countries and Human Rights", in *The International Dimensions of Human Rights*, Ed. by Karel Vasak and Philip Alston, 1982, vol. II, pp 631–650. Concerning the Third World view, cf. *Third World Attitudes Toward International Law*, Ed. by Frederick E. Snyder and Surakiart Sathirathai, part Four, "Sovereignty and International Standards: Human Rights", pp 259–357; Tunkin, *Theory of International Law*, 1974, pp 82–83.

state; the interests of the individual were understood to be identical with the interests of the state and vice versa.<sup>29</sup> This has the result, in practice, that the state interest always prevails over the individual interest.

On the international level, Hungary touched upon the relationship between human rights and other values in the information sphere in a Unesco debate: Although freedom of expression, opinion and information are "real values", "they should not be set up against the most basic values of humanity: peace, mutual understanding and growing equality."<sup>30</sup> According to such a view individual human rights are of minor importance compared to other all-embracing values.<sup>31</sup> "'Personal freedom' should be differentiated from 'personal arbitrariness' which disregards the interests of the society as a whole and hence the interests of the collectivity", according to Kartashkin.<sup>32</sup>

An outgrowth of the doctrine of state sovereignty in the sphere of information is the former Soviet concept of "information sovereignty". Information sovereignty implies that the State has a right to control the dissemination of information within its territory. The State according to this doctrine has the right to control the news flowing out of the country and the news coming in.<sup>33</sup> This doctrine primarily affects the qualitative aspect of the news flow and has strongly influenced the Soviet attitude in the NWICO debate. It has also influenced the Third World attitudes.<sup>34</sup> It has been held, by observers sympathetic with the NWICO demands, that the formulation of international rules governing the operations of the mass media would *confirm* the existence of the national sovereignty of states in the field of information and culture.<sup>35</sup> The

<sup>29</sup> Cf. UN Official Records of the Third Session of the General Assembly, Part I, Social Humanitarian and Cultural Questions, Third Committee, Summary Records of Meetings, 21 September – 8 December 1948, statement by the USSR delegate, Pavlov, pp 644–645; *ibid.*, Plenary Meetings of the General Assembly, Summary Records of Meetings 21 September – 12 December 1948, the USSR delegate, Vyshinsky, p 924; Dimitrijevic, *op.cit.* ch. 1.2.1 (n. 9), p 67; Kartashkin, *ibid.*, p 634.

<sup>30</sup> Unesco, Summary of Interventions, 1976, statement by Hungary, p 24.

<sup>31</sup> Western liberal and Socialist conceptions of human rights are compared by Bloed and van Hoof in "Some Aspects of the Socialist View of Human Rights", in *Essays on Human Rights in the Helsinki Process*, Ed. by Arie Bloed and Pieter van Dijk, 1985, pp 29–55.

<sup>32</sup> Kartashkin, *op. cit.* (n. 28), p 633.

<sup>33</sup> Cf. Kelly, *op. cit.* (n. 16), p 261; Unesco Gen. Conf., 23rd Sess., 1985, Report of Commission IV, p 192.

<sup>34</sup> Cf. Mankekar, *op. cit.* ch. 2.1 (n. 2), p 207.

<sup>35</sup> Cf. *Peace and the Sciences*, No. 1, 1978, "Discussion", p 5. Cf. also Kleinwächter, "The

existence of such a sovereignty is controversial, however. From a Western standpoint the doctrine of information sovereignty runs contrary to the existing human rights law of freedom of information because it allows general government interference in the news flow.

A slightly different but up to now very popular way of using the national sovereignty argument is to use it as a protection against critical reporting by saying that critical, or negative, news constitutes an attack against the national sovereignty or an interference in the internal affairs of states.<sup>36</sup>

In fact, the prime former Soviet legal argument in favour of a NWICO was that relations in the information sector and media policies form part of the over-all system of international relations and should be regulated by such norms of international law as, primarily, respect for national sovereignty and non-interference in the internal affairs of other states. These norms were also important components of the Soviet international legal doctrine of peaceful coexistence (between the formerly two world socio-economic systems) which was applied also to international information relations.<sup>37</sup> According to the records of the 1978 Unesco General Conference, the USSR delegate "called for a clear statement that all international exchanges of information should be based on principles already explicit in many international agreements, which specifically pointed out the need for non-interference in the affairs of sovereign States."<sup>38</sup>

Against this the Western countries have argued that the international news exchange should be as "free" and "open" as possible in accord-

⇒ Conceptualization of a New International Information Order—Perspectives of Discussions", unpublished paper submitted at the First UN-Unesco Roundtable on a New World Information and Communication Order, Innsbruck, Austria, 14–19 September 1983, pp 15–18.

<sup>36</sup> Cf. Bloed and van Dijk, "Human Rights and Non-Intervention", in *Essays on Human Rights in the Helsinki Process*, Ed. by Arie Bloed and Pieter van Dijk, 1985, pp 57–78. Cf. also Bloed and de Wouters d'Oplinter, "Jamming of Foreign Radio Broadcasts", *ibid.*, pp 163–180.

<sup>37</sup> Cf. Shevtsova, *op. cit.* (n. 27), p 51; *The Soviet Impact on International Law*, Ed. by Hans W. Baade, 1965; Tunkin, *op. cit.* (n. 28), pp 21–48. The coexistence perspective was also adopted by a few Westerners in relation to a NWICO (cf. Dill, "Who May Say What to Whom—A Short Introduction to the New World Information Order", in *Toward a New World Information Order: Consequences for Development Policy*, Ed. by Dieter Bielenstein, 2nd ed., 1980, p 57. Vinogradov illustrates the earlier Soviet view of the struggle between the two systems in the information sphere: "Information plays an enormous role in the competition between the two world social systems. The victory in this competition will depend largely on the ability of a social system to create socially useful information on an ever-increasing scale and to use it most effectively and appropriately in all spheres of material and nonmaterial production" (Vinogradov, "Information and Global Problems of Modern Times", *Soviet Law and Government* (a journal of translations), vol. 23, 1984, p 98).

<sup>38</sup> Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 145.

ance with what they have perceived as the relevant rule of international law, namely the human right to freedom of information, regardless of frontiers.<sup>39</sup> Also, news reporting in itself, even if critical or negative, is not in principle considered to constitute illegal interference (i.e. intervention) in the internal affairs of other states. A particularly sensitive issue both for the former Soviet bloc and for the Third World countries has been criticism of the human rights situation in these countries. On the other hand, the view of the former Soviet bloc countries in particular that the mass media of "some (Western, author's note) countries" were engaged in some form of propaganda and were trying at least indirectly to undermine "certain Governments and social systems" (i.e. the Soviet bloc ones) was not completely unfounded.<sup>40</sup>

A consequence of the doctrine of state information sovereignty, entailing state control of the news and information flows, has been the view that states should be made internationally responsible for the content of the news reported by "their" mass media, i.e. the mass media under their jurisdiction.<sup>41</sup>

Not only should states be internationally responsible for the mass media under their jurisdiction. The journalists and the mass media in their turn should also be responsible, according to the former Soviet bloc and the Third World NWICO advocates. And they should be responsible for creating a climate of confidence and understanding in international relations and for contributing to solving the major problems confronting mankind.<sup>42</sup> Peace and understanding in international relations are counteracted according to this view by negative reporting. The responsibility of the mass media for promoting international peace and understanding was an argument of particular importance to the former Soviet bloc. The Third World NWICO advocates have tended to emphasize the responsibility of the mass media of supporting or understanding their development efforts.

Against the alleged responsibility of the mass media to support dif-

<sup>39</sup> Cf. Unesco Gen. Conf., 19th Sess., 1976, Plenary Proceedings, pp 453, 459, 463; 20th Sess., 1978, Report of Commission IV, p 140; 22nd Sess., 1983, Report of Commission IV, p 138; 23rd Sess., 1985, Report of Commission IV, pp 192, 194-195; 24th Sess., 1987, p 153.

<sup>40</sup> Cf. UN, GAOR, 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 13. Cf. also Shevtsova, *op. cit.* (n. 27), p 54.

<sup>41</sup> Cf. Unesco Gen. Conf., 18th Sess., 1974, Report of Commission IV, pp 124, 127. See also Wiewiórowska, *op. cit.* ch. 1.2.4 (n. 162), pp 141-154.

<sup>42</sup> Cf. ch. 2.1 (n. 57).

ferent causes, Western observers have argued that the journalists themselves should decide what to report on and how to report.<sup>43</sup> The Western countries have generally turned against the idea of journalists having particular political responsibilities in addition to their strictly professional responsibility. The former Soviet bloc in particular pointed to the potential dependency of the journalists on the owners of the mass media in the Western world and the potentially conflictual character of this relationship. In the Western view in the NWICO debate, however, most important has been that the mass media are not subject to influence or control by the State. The relationship between the journalists and the owners has not been regarded as problematic or as relevant to the issue of freedom of information as the relationship between the mass media and the State.

A variation of the primarily former Soviet bloc theme was that the State was the main guarantor that the power wielded by the mass media would not be abused against the interests of society.<sup>44</sup> This is a contribution to the NWICO debate by a Romanian observer: "Based on both its personal experience and the requirements of international life—mainly the necessity to defend peace in the world—Romania believes that to enable the information media to contribute to the achievement of the highly important tasks incumbent upon them in promoting the ideas of peace and international understanding, it is necessary that they should benefit from the *constant support of the government* in their duty of providing public opinion with objective, accurate information about events, processes and trends in international life (emphasis added)."<sup>45</sup>

The Western bloc would argue that the "constant support" of the government connected with a duty of the mass media to provide the public with a certain kind of information, probably accepted in advance by the government, would rather work against international peace and understanding. It implies a responsibility of the media to "support" government policy in their turn. The delegate of the Federal Republic of

<sup>43</sup> Cf. Unesco Gen. Conf., 17th Sess., 1972, Report of Commission IV, p 122; 18th Sess., 1974, Report of Commission IV, p 126; 21st Sess., 1980, Report of Commission IV; pp 166, 179; 23rd Sess., 1985, Report of Commission IV, p 196.

<sup>44</sup> Cf. Osolnik, "Unesco: The Mass Media Declaration", *Review of International Affairs*, (Belgrade), vol. XXX, No. 690, 1979, p 24.

<sup>45</sup> Serafin, "Mass Media and the Trend towards Détente, Cooperation and Peace", *Peace and the Sciences*, No. 1, 1978, p 64.

Germany to Programme Commission III pointed out at Unesco in 1976 that the Germans “had learned from recent bitter experience what it was like when the State controlled the media, determined the information to be disseminated and decided what was true or was not true.”<sup>46</sup> This experience was not particularly peaceful.

The former Soviet bloc and the developing countries have seldom invoked economic arguments in favour of a NWICO, i.e. that the Soviet bloc and the Third World countries must struggle for a NWICO because it lies in their immediate economic interest. The economic arguments occur in the form of justice and equality arguments when the advocates of a NWICO call attention to the connections between a NWICO and the New International Economic Order (NIEO). Then the economic angle is structural and aims at a remodelling of the international economy as a whole.

The principal economic argument against a NWICO that is invoked by the Western countries, and in fact mostly by the United States which is the world’s leading nation as far as information technology and equipment is concerned, is that there must be no regulation that will obstruct the international trade in information technology products. Barriers to the international flow of information would be damaging to United States business and national interest.<sup>47</sup>

This recognition is also used by the spokesmen for a NWICO against the United States in particular. Then it is maintained that the sole purpose of the free flow of information doctrine—developed as we know after World War II—was to help build up and today uphold what is regarded as the United States global hegemony; “accompanying the rhetoric of freedom were powerful economic forces employing a skillful political and semantic strategy,” as Schiller puts it.<sup>48</sup> The utilization, according to Schiller, of the UN and its affiliated organizations as instruments of United States policy and, additionally, as effective forums for the propagation of the free flow doctrine can best be under-

<sup>46</sup> Unesco, Summary of Interventions, 1976, p 30.

<sup>47</sup> Cf. *Department of State Bulletin*, vol. 82, No. 2063, 1982, pp 78–80, remarks by Under Secretary for Security Assistance, Science, and Technology, James Buckley; Abel, “Global Information: The New Battleground”, *Political Communication and Persuasion*, vol. 1, 1982, p 348.

<sup>48</sup> Schiller, “Genesis of the Free Flow of Information Principles”, in *Crisis in International News: Policies and Prospects*, Ed. by Jim Richstad and Michael H. Anderson, 1981, p 164. Cf. also Unesco Gen. Conf., 22nd Sess., 1983, Report of Programme Commission IV, p 135.

stood in the context of the international economy in the early 1950s.<sup>49</sup> Righter, an ardent opponent of a NWICO, has argued, however, that at stake is far more than the economic interests of the Western press. At stake is, according to Righter, the ability of the citizen, in the developing countries as well as in the West, to make his opinions heard and to make his own choices on the basis of knowledge.<sup>50</sup>

Theories of colonialism, neocolonialism and cultural or information imperialism are used to support arguments in favour of a NWICO. According to this line of reasoning the resistance on the part of the West toward a restructuring of the international information system and the promotion on the part of the West of a free flow of information across borders is nothing but a manifestation of endeavours to revive old forms of colonialism under new conditions, the wish being to impose one's own will in a neocolonial fashion and avail oneself of the resources belonging to nations which used to be colonies.<sup>51</sup> After the political and economic liberation has been realized, the cultural imperialism must be dealt with before complete liberation from colonial oppression—"full sovereignty"—can be achieved. This illustrates the linkage between the NIEO and a NWICO, since when economic equality has been achieved cultural equality must also be achieved before the Third World countries can be really free from Western domination. The principle of self-reliance is common and fundamental to both new orders.<sup>52</sup>

According to the Third World spokesmen, the Western societal ideals and consumer patterns are also transferred through the overwhelming flow of news from the West which creates unrealistic needs and desires on the part of the population of the developing countries—"instilling in

<sup>49</sup> Cf. Schiller, *ibid.*, p 171; Szulczewski, "The Concept of the New International Information Order", *Studies on International Relations*, (Warsaw), No. 13, 1979, p 125.

<sup>50</sup> Righter, *op. cit.* ch. 2.1 (n. 12), p 76.

<sup>51</sup> Cf. Bartolovic, *op. cit.* ch. 2.1 (n. 7), pp 52-53; Masmoudi, *op. cit.* ch. 2.1 (n. 11), p 173; Zassursky and Krasikov, "Exchange of Information and Information Imperialism", *International Affairs*, (Moscow), 1983, pp 51-59; Shevtsova, *op. cit.* (n. 27), p 56; Vinogradov, *op. cit.* (n. 37), pp 86-90.

<sup>52</sup> Addis, *op. cit.* ch. 2.1 (n. 1), 1988, pp 500-501; Chen, 1985, *op. cit.* ch. 2.1 (n. 1), p 252; Pavlic and Hamelink, *The New International Economic Order: Links between Economics and Communications*, Unesco, *Reports and Papers on Mass Communication*, No. 98, 1985, pp 25-45. Hamelink, an assiduous advocate of a NWICO, has offered the following definition of the new order: "An international exchange of information in which states, which develop their cultural system in an autonomous way and with complete sovereign control of resources, fully and effectively participate as independent members of the international community" (Hamelink, *The New International Information Order: Obstacles and Opportunities*, 1980, p 20).

them needs and appetites which [cannot] be satisfied within the present economic and social structures”<sup>53</sup>—and perhaps even hostility towards their own society and leaders who cannot offer their citizens such good a material life as their Western counterparts can. This is a manifestation of cultural imperialism. The West European consumerism which is forced upon the developing nations leads to the perpetuation of domination, cultural and economic, over the recipient countries.<sup>54</sup>

Cultural imperialism also means that the indigenous Third World cultures are destroyed by the massive news and information flow originating from the Western world and that foreign values are forced upon the people—“intellectual genocide” according to a Byelorussian statement in 1976.<sup>55</sup> The importance of protecting the indigenous Third World cultures has often been emphasized in the NWICO debate by the proponents of a new order.<sup>56</sup>

The pressing need for “decolonization of information” and the ensuing “democratization” of the international information flow has in fact been one of the most important arguments of the NWICO advocates.<sup>57</sup> Most immediately concerned by the decolonization and democratization are the Third World countries, but they have, up until recently, been strengthened in their argumentation by the support of the Soviet bloc.

“Democratization” of international information probably means that all parties should have the same factual opportunity to participate, quantitatively and qualitatively. “Democratization”, however, in Socialist thinking usually means state ownership of the means of production,

<sup>53</sup> Unesco, Summary of Interventions, 1976, statement by Congo, p 36. Cf. also Sepetu, op. cit. ch. 2.1 (n. 50), p 61.

<sup>54</sup> Cf. Mankekar, op.cit. ch. 2.1 (n. 2), p 38; Strozzi, op. cit. ch. 1.2.1 (n. 11), p 987; Unesco Gen. Conf., 23rd Sess., 1985, Report of Commission IV, pp 194–195.

<sup>55</sup> Unesco, Summary of Interventions, 1976, p 15, the delegate of Byelorussia is referring specifically to “propaganda for violence and pornography”; cf. also Yugoslavia’s view, p 18, and Congo’s view, p 36.

<sup>56</sup> Cf. Unesco Gen. Conf., 18th Sess., 1974, Report of Commission IV, p 127; 20th Sess., 1978, Report of Commission IV, pp 113, 141; 21st Sess., 1980, Report of Commission IV, pp 138; 22nd Sess., 1983, Report of Commission IV, p 135. For a critical view of the “protection of cultural identity” argument in the context of Third World news media, see Witte, “Media Policy for Free Flow of Information”, *Aussenpolitik: German Review of Foreign Affairs*, vol. 33, 1982, p 182.

<sup>57</sup> Cf. Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, pp 162, 179, 182, 188; 22nd Sess., 1983, Report of Commission IV, pp 134–135; 23rd Sess., 1985, Report of Commission IV, pp 190–191, 200–201; 24th Sess., 1987, p 152. Cf. also Balle, op.cit. ch. 2.1 (n. 1), p 62; Bartolovic, op.cit. ch. 2.1 (n. 7), p 52; Masha, “Decolonizing Information: Toward a New World Information and Communication Order (NWICO)”, *Political Communication and Persuasion*, vol. 1, 1980, pp 337–342; Osolnik, op. cit. (n. 44), p 26; Osolnik, op. cit. ch. 2.1 (n. 59), p 13; Zassursky and Krasikov, op. cit. (n. 51), p 53.

in this case of the mass media. On the part of the NWICO advocates these two different meanings of "democratization" have often coincided. Or at least this is what Western observers have feared.

On the other hand, most representatives of the former Soviet bloc countries taking part in the debate emphasized, however, that state ownership of the mass media is not necessary for the realization of a NWICO.

To the opponents of a NWICO these assertions have sounded a little false. They have found it hard to reconcile such assertions with statements like this one, for example, made by a Czech observer in 1978: "If we disregard that part of the journals, dailies, and television and radio stations which are in the hands of the capitalists and in their interest promote armament, undermine understanding between nations, and obstruct progress, it becomes clear that a significant part of the mass media are operated by the supporters of peace and progress who are interested in the free flow of information in its purest form."<sup>58</sup>

Judging from this statement there existed an opposition between capitalists or capitalism on the one hand and work for peace and progress and an interest in the free flow of information "in its purest form" on the other. Given that mass media which are not "in the hands of capitalists" usually are in the hands of the State, some Western observers drew the conclusion, rightly or wrongly, that what many if not necessarily all spokesmen for a NWICO had in view was a turning over, in some form, of the mass media to the State.<sup>59</sup>

At the Prague symposium in 1982, mentioned earlier, on a new international information order, the democratization of international information relations was explicitly referred to. It was shown at the symposium that "a new international information order" consists of two basic elements: "First, the need for *democratically* drawing up and adopting norms for an international exchange of information, and second, the need for a system of mass communications embracing the whole world and making it possible to proceed with this exchange equitably, in the interests of all countries and peoples (emphasis

<sup>58</sup> Koukal, "Contribution", *Peace and the Sciences*, vol. 1, 1978, p 69. Vinogradov said in 1984 that the mass communication struggle in and around Unesco "is one of the many manifestations of the bitter clash on our planet between the forces of progress, peace, détente and international cooperation, on the one hand, and advocates of aggression, confrontation, and reaction, on the other (Vinogradov, op. cit. (n. 37), p 88).

<sup>59</sup> Cf. also Szulczewski, op. cit. (n. 49), pp 121-122.

added).”<sup>60</sup> According to the view of the symposium, furthermore, it was not the purpose of a new information order to replace the “old”, for in fact there was no “old order”: “*Democratic norms of international information relations globally and a world system of mass communications have to be worked out for the first time, without any precedents (emphasis added).*”<sup>61</sup> It is not entirely clear what was meant by the concept of democracy in this case, but it was discussed in the context of anti-imperialism.

It could be pointed out that the licensing of journalists which has also been called for by the NWICO advocates seems to be contrary to the demands for “democratization” which could be understood as implying, at least on the national level, access for more people to participation in the work of the mass media.<sup>62</sup> A licensing system would circumscribe the possibilities of “laymen”, as opposed to professional journalists, having access to the mass media. However, the “democratization” called for in the NWICO context has in reality above all concerned with the international aspects of news transmission and has been aimed at making the international news flow democratic from the point of view of states (and not individual citizens).

Another, political, argument which is also connected to democracy and which has been propounded by the Western countries against a NWICO is that the regimes which have favoured a NWICO are often undemocratic (from a Western point of view). This has given the West reason to believe that the principal purpose for advocating a NWICO on the part of many Third World leaders and on the part of the former Soviet bloc, has simply been their wish to control and censor the flow of information and ideas that reaches their populations.<sup>63</sup> This alleged aim runs diametrically against the relevant human rights doctrine according to which information and ideas should be allowed to flow freely, within as well as between countries. The same Third World leaders, and leaders from the former Soviet bloc, who have condemned the international monopoly of information exercised by the major West-

<sup>60</sup> *World Marxist Review*, “On the way to a new international information order. The Communist view of the struggle to democratize information”, op. cit. ch. 2.1 (n. 60), p 39.

<sup>61</sup> *Ibid.*

<sup>62</sup> Cf. Holzberg, op. cit. ch. 2.1 (n. 1), p 408. See further ch. 3.1.2.

<sup>63</sup> Cf. Abel, op. cit. (n. 47), p 353; Balle, op.cit. ch. 2.1 (n. 1), p 63; Mankekar, op. cit. ch. 2.1 (n. 2), pp 85–86; Rosenblum, “Reporting from the Third World”, in *Crisis in International News: Policies and Prospects*, Ed. by Jim Richstad and Michael H. Anderson, 1981, p 236.

ern news agencies, it is argued, often represent governments which impose internal monopolies on all incoming and outgoing information.<sup>64</sup>

In order to point out what they perceive as hypocrisy on the part of the Third World NWICO spokesmen, the Western countries have argued that whereas the Third World NWICO advocates are worried about imbalances in the international news flow, they are not as interested in rectifying national imbalances. Quantitatively, it is argued on the part of the West, many Third World countries have not been as worried about the fact that within their own countries news does not flow in equal amounts from the periphery to the centre or from the poor to the rich as it does in the opposite direction.

Qualitatively, in particular, it has been doubted whether the Third World states are equally interested in letting their own population in general "have access to" or "participate in" the national news processing and giving them the opportunity freely to express their "undistorted" views on different subjects, as they are in participating themselves in the international news flow. This doubt on the part of the West is particularly relevant in relation to political and other opponents of the respective governments of the Third World countries. It is also relevant in relation to different ethnic and religious minorities within the Third World countries which would like to make their voices heard.

A political argument in favour of a NWICO which has to do with government control, is that the Third World governments have to control the news flow in order to keep their nations from falling apart from deep political and other divisions within the population. In this situation, it is claimed by the Third World NWICO advocates, government control is a necessary prerequisite of economic and social development. However, with the human rights instruments as a point of departure this is a doubtful justification of general government control of the news flow.

The Third World spokesmen for a NWICO claim that the Western style of independent, critical or negative reporting does not suit the fragile developing societies and even prevents their development. Related to this argument on the part of the NWICO advocates is the above-mentioned one that the indigenous cultures of the countries of the Third World must be protected against the foreign influence gener-

<sup>64</sup> Cf. Abel, "Communication for an Interdependent, Pluralistic World," in *Crisis in International News: Policies and Prospects*, Ed. by Jim Richstad and Michael H. Anderson, 1981, p 104.

ated by the inflow of news and information from the Western world. The opponents of a NWICO for their part claim that a free flow of news and information is a prerequisite of economic and social development.

One opponent of a stricter regulation of the flow of information, Gauhar, says that the evolution of a community depends on debate and dissent and that a strong tradition of tolerance is essential for the evolution of social consensus—as opposed to fragile political structures—in a co-operative and creative manner. To suggest, like the Third World leaders, that a social consensus must first develop before a community can have its press shows, according to Gauhar, that these leaders are ignorant of the process through which consensus is developed. When Third World leaders complain of lack of social cohesion in their countries, writes Gauhar, they do not realize that it is the absence of a free national press which makes their social orders even more fragile.<sup>65</sup>

Chen states that the imposition of limitations in the name of “nation-building” or “development needs” is “generally suspect”.<sup>66</sup> The free flow of information does not impair the task of nation-building, Chen writes. “If anything, facilitation of the free flow of information is a vital part of nation-building, vital to a healthy development process.”<sup>67</sup> In an empirical study entitled “Press Freedom, Media, and Development, 1950–1979: A Study of 134 Nations” the authors conclude, *inter alia*, that their data provide no support to those who advocate controlling the press in an effort to stabilize society and promote development.<sup>68</sup> The authors of the study could find no increase in educational, media, or economic development during this time period for countries in which government control of the press was increased.<sup>69</sup>

Against this the proponents of a NWICO claim that it is true that many Third World nations have been forced by circumstances to slide into other political systems than a democratic one resulting in a lack of

<sup>65</sup> See Gauhar, *op. cit.* ch. 2.1 (n. 7), p 73. Cf. also Wilcox, *Mass Media in Black Africa. Philosophy and Control*, 1975, pp 24–33; Theberge, “U.N.E.S.C.O.’s ‘New World Information Order’: Colliding with First Amendment Values”, *American Bar Association Journal*, vol. 67, 1981, p 717–718; Howard, *Human Rights in Commonwealth Africa*, 1986, pp 126–128.

<sup>66</sup> Chen, *op. cit.* ch. 2.1 (n. 1), p 260. Cf. also Goodin, “The Development-Rights Trade-Off: Some Unwarranted Economic and Political Assumptions”, *Universal Human Rights*, vol. 1, 1979, pp 31–42.

<sup>67</sup> Chen, *ibid.*

<sup>68</sup> Weaver, Buddenbaum, Fair, “Press Freedom, Media, and Development, 1950–1979: A Study of 134 Nations”, *Journal of Communication*, 1985, p 116.

<sup>69</sup> *Ibid.*

freedom of the press, but this is all part of the painful process of political evolution. The Western countries already underwent this process two hundred or three hundred years ago. So, as the Third World nations are just on their way through the necessary stages of political and societal evolution the West has no right to force a system of free press upon them when they are not yet ready for it and which the West itself certainly did not have two or three hundred years ago.<sup>70</sup>

Nobody knows for certain how societies in general develop or become “modern”, so in theory either those who favour a free Third World press or those who favour an unfree press could be right. Of course, favouring a free press seems more sympathetic to a Western observer, and is the only acceptable and indeed lawful view from a human rights standpoint, and in the long run one would like to think that freedom rather than unfreedom is most favourable for development. Lately, it seems as if many Third World countries are reevaluating their earlier deterministic view of development, i.e. that they must pass through the same stages as Western societies have done before they are ready for press freedom. In the beginning of the 1990s, many former totalitarian African governments, for example, proclaimed that they would move toward multi-party democracy including, presumably, a larger amount of press freedom. Also, recent developments in Eastern Europe seem to illustrate that liberal democratic rights and freedoms are regarded as essential, *inter alia*, for the economic development of societies.

## 2.3 The role of the press in society

On the national level different political systems have generated different views of the role that the press should play in society. The views of the national mass media have often coloured the opinions voiced internationally on the subject of freedom of information and a NWICO.<sup>1</sup>

Briefly the Western industrial nations hold the liberal, or *bourgeois*, view that the press should play the role of the “watchdog” of the public.

<sup>70</sup> Cf. Mankekar, op.cit. ch. 2.1 (n. 2), 1981, p 4.

<sup>1</sup> For a deeper and more comprehensive analysis of different roles of the press in society than will be provided here see for example Balle, op. cit. ch. 1.2.1 (n. 21), 1990, pp 213–526; Hachten, *The World News Prism. Changing Media, Clashing Ideologies*, 1981, pp 60–126; Siebert, Peterson and Schramm, *Four Theories of the Press*, 1956. See also Sussman, *Power, the Press and the Technology of Freedom. The Coming Age of ISDN*, 1989, pp 99–355; *World Press Encyclopedia*, vols. 1–2, Ed. by George Thomas Kurian, 1982.

The press should closely and critically watch those holding public power and call attention to any failings in their discharging their duties. The press is seen as a necessary tool for the functioning of a democratic society. It is seen as an instrument of the public, not of those in power. At the Unesco General Conference in 1983 the Western states emphasized "the functions of inquiry, analysis and monitoring played by the media, and ... their useful role of sentinel, which enabled them to counterbalance the economic and political establishments by exposing cases of waste, corruption, unproductive diversion of resources, abuse of power and violation of human rights."<sup>2</sup>

Indeed, according to the European Commission of Human Rights in the Lingens case, it is a "duty and responsibility" of the press in a democratic society to control those who hold public power.<sup>3</sup> The European Court followed the Commission, as van Dijk and van Hoof write, in stressing the special importance of freedom of ideas and freedom of the press in a democratic society.<sup>4</sup>

According to the view of the former Soviet bloc, however, the press should play quite a different role in society.<sup>5</sup> Today all the Eastern European countries formerly members of the Soviet bloc have given up this view of the press and now share the Western liberal view, except in the case of Romania where the situation is more unclear. Within the former Soviet Union itself a new press law came into force on 1 August 1990 which was one sign among many that the former conception of the role of the press was changing.<sup>6</sup> The new law, *inter alia*, bans prior censorship and grants the right to other bodies than the Communist Party (which incidentally was outlawed in November 1991), including

<sup>2</sup> Unesco Gen. Conf., 22nd Sess., 1983, Report of Commission IV, p 141 Cf. also Graubart, "What's News: A Progressive Framework for Evaluating the International Debate Over the News", *California Law Review*, vol. 77, 1989, pp 656-657.

<sup>3</sup> Lingens v. Austria, Report of 11 October 1984, (annexed to Eur. Court H.R., Lingens judgment, *supra* ch. 1.2.3 (n. 73)), para. 74.

<sup>4</sup> Van Dijk and van Hoof, *op.cit.* ch. 1.2.1 (n. 10), p 416.

<sup>5</sup> Cf. for example Gerrits and Prakken, "Helsinki, Madrid and the Working Conditions for Western Journalists in Eastern Europe", in *Essays on Human Rights in the Helsinki Process*, Ed by Arie Bloed and Pieter van Dijk, 1985, pp 127-133.

<sup>6</sup> The text of the law is reproduced in *The Current Digest of the Soviet Press*, (Columbus, Ohio), vol. XLII, No. 25, July 25 1990, pp 16-20. See also Sussman, "The New Press Law of the USSR", *Freedom at Issue*, (Freedom House, New York), Sept-Oct 1990, pp 34-36. An equivalent law has been adopted by Russia. Concerning the difficult situation of Western journalists in Eastern Europe before the fall of the Berlin wall, cf. Gerrits and Prakken, *ibid.*, pp 127-161, Note, "The Free Press and its Territorial Limitations", *Brooklyn Journal of International Law*, vol. 5, 1979, pp 348-378.

individual citizens, to found a mass medium. Journalists also hereafter have the right to demand information and access to documents from state bodies, social organizations and officials. One factor limiting the effective exercise of the new press freedom, however, is the paper shortage in the countries formerly making up the Soviet Union.<sup>7</sup>

Because of its strong influence on the NWICO debate and its importance in the debates concerning freedom of information in the UN General Assembly after the Second World War, the former Soviet bloc view will be dealt with in some detail. There are still a few states left maintaining the traditional Communist view, China, Cuba and North Korea.

Basically—in a Socialist society—the press is, and should be, an instrument of the Communist Party. The press within the Soviet bloc was thus not understood as having the primary role, as in the West, of critically observing those in power. If the press in the West ideally is seen as being directed upwards from the public focussing on the politicians, the press in the former Soviet bloc could be seen as an instrument directed downwards from those in power toward the public. The role of the press in this case was to convey and explain to the public the policies and decisions of those in power and to ensure the support of the people for the policies pursued. The press was seen by the leaders as one of the means which helped them carry through their political decisions.

Lenin stated that the freedom of the press is one of the slogans of “pure democracy” (approximately the same as bourgeois democracy). “The workers know however that this freedom is only an illusion as long as capitalists possess the best printing houses and the largest reserves of paper, as long as the capitalists rule the press. This becomes more apparent and more cynical the more democracy and the republican order is developed. True equality and genuine democracy can only be achieved by depriving the capitalist of the possibility to hire writers, to bribe and publish newspapers and this in turn calls for the overthrowing of capitalist slavery and the ousting of the exploiters as well as the suppression of their resistance.”<sup>8</sup> This quote from Lenin is often used both by non-Socialist and Socialist writers to illustrate the Communist or Socialist conception of the role of the press in society.

<sup>7</sup> Cf. *Keesing's Record of World Events*, 1990, vol. 36, p 37541.

<sup>8</sup> Quoted after Bartolovic, op. cit. ch. 2.1 (n. 7), p 62. Also found in Lenin, *Borgerlig demokrati och proletär diktatur. Taser antagna på den Kommunistiska världskongressen i Moskva den 2–6 mars 1919*. [Bourgeois democracy and the dictatorship of the proletariat], 3rd ed., 1928, pp 8–9.

The then rapporteur on matters relating to freedom of information of the ECOSOC, Salvador P. López, in a report in 1953 quoted the Soviet minister for foreign affairs, Andrei Vyshinsky, who, interpreting the Soviet Constitution, stated that “freedom of speech, of the Press ... are the property of all the citizens in the USSR, fully guaranteed by the State upon the sole condition that they be utilized in accord with the interests of the toilers and to the end of strengthening the socialist social order.”<sup>9</sup> A late heir to Lenin in a similar way writes that “the attainment of ‘real freedom’ is related, first of all, to the liberation of labour from the domination of capital and the elimination of exploitation of the people.”<sup>10</sup>

Consequently it was claimed that, also on the international level the best would be a complete transformation of the relations between nations from capitalist to Socialist or something of that kind. A fundamental restructuring of international relations has therefore often been advocated by the former Soviet bloc and also by the developing countries in connection with the demands for a NWICO.

To the extent that the countries of the Third World can be said to have a common view of the role of the press in society it rather leans toward the former Soviet conception. The developing countries are of the opinion that the press should co-operate with the leaders and take an active part in the efforts to build a modern society. The journalists, to put it simply, should concentrate on the successes instead of the failures of development, even if the successes are fewer than the failures.<sup>11</sup> This kind of journalism is generally called development journalism.<sup>12</sup> Some writers prefer to make a distinction between development journalism

<sup>9</sup> Freedom of Information, A report on contemporary problems and developments, with recommendations for practical action, op. cit. ch. 1.1.2 (n. 10), p. 3.

<sup>10</sup> Kartashkin, op. cit. ch. 2.2 (n. 28), p. 633.

<sup>11</sup> Cf. Gauhar, op. cit. ch. 2.1 (n. 7), p. 71.

<sup>12</sup> For a further discussion of development journalism see Ali, “DEPTHnews: A Model for a Third World Feature Agency”, In *The Third World and Press Freedom*, Ed. by Philip C. Horton, 1978, pp. 187–196; Berwanger, “The Establishment of a New International Information Order—Summary of a World-Wide Debate”, in *Toward a New World Information Order: Consequences for Development Policy*, Ed. by Dieter Bielenstein, 1979, p. 46; Balle, op. cit. ch. 1.2.1 (n. 21), pp. 477–479; Foreign News in the Media: International Reporting in 29 Countries, supra ch. 2.1 (n. 9), p. 6; Chen, op. cit. ch. 2.1 (n. 1), p. 260; Fenby, *The International News Services*, 1986, pp. 185–189; Hachten, op. cit. (n. 1), pp. 72–75; Jeffrey, “Free Speech and Press: An Absolute Right?”, *HRQ*, vol. 8, 1986, pp. 210–218; Kelly, op. cit. ch. 2.2 (n. 16), p. 14; Stevenson, *Communication Development and the Third World*, 1988, pp. 141–164; Sussman, “Mass News Media and the Third World Challenge”, in *International News. Freedom Under Attack*, Ed. by Dante B. Fascell, 1979, pp. 110–134; Sussman, op. cit. (n. 1), pp. 142–146.

which they mean is a branch of journalism created by journalists themselves and developmental journalism which is inspired by governments.<sup>13</sup>

Hamdy Kandil, at the time of this statement (1982) Director of the Division of Free Flow of Information and Communication Policies with Unesco, describes development journalism, although he does not explicitly use that particular term, when he declares that the major communications problem in developing countries is how the mass media "can contribute to the search for economic and social progress and how it can help in the fight against poverty, hunger, malnutrition and disease."<sup>14</sup> In 1976, the delegate of Guyana to the Unesco General Conference stated that for the good of development the media should become "an instructive link between government and people" and be used "to mobilize the citizens for the development of the country".<sup>15</sup> Since the State is the essential development agency, the State, according to the delegate of Guyana, has a responsibility to ensure that the mass media fulfil this function.<sup>16</sup> The delegate of the Philippines expressed a similar view: "At this point in the history of the Philippines the mass media must reinforce the work of government and the idea of nation and nationality. They must inculcate values that helped (sic!) development, injecting the ethic of work and achievement into the fabric of national life. /.../ Guidelines and standards for the mass media were needed for the development of communication in the present restructuring of Philippines society."<sup>17</sup>

In 1983 a Unesco delegate expressed the Third World view of the role of the mass media as being "an essential means of mobilizing populations, encouraging a collective development effort, channelling energies, promoting national identity, preserving ethnic harmony and strengthening national integration."<sup>18</sup> The more the developing nations are struggling to establish political, economic and social stability the stronger the appeal of a state-controlled press seems to be. In reality,

<sup>13</sup> Sussman, "Developmental Journalism: the Ideological Factor", in *The Third World and Press Freedom*, Ed. by Philip C Horton, 1978, p 140.

<sup>14</sup> *Issues in International Information*, Vol. II, 1982: Kandil, p 13.

<sup>15</sup> Unesco. Summary of Interventions, 1976, statement by Guyana, p 29.

<sup>16</sup> Ibid.

<sup>17</sup> Unesco. Summary of Interventions, 1976, p 37; cf. also Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, p 179.

<sup>18</sup> Unesco Gen. Conf., 22nd Sess., 1983, Report of Commission IV, p 141.

views differ concerning the merits of state controlled media in actually promoting stability and development.

There is a wide variety among the developing countries concerning the extent of freedom (of the liberal kind) that is enjoyed by the press. Most Third World countries, however, obviously do not have a free press.

Several organizations and research institutions monitor the state of press freedom around the world. Freedom House in New York for example makes yearly assessments, *inter alia* of the freedom of the press, as does the US Department of State in its Country Reports on Human Rights Practices. The International Press Institute and the organizations Index on Censorship and the newly established Article 19 also continuously monitor the state of press freedom worldwide.

In 1990, Freedom House, which is the only one of the above-mentioned institutions which tries to quantify press freedom, estimated that of the 157 countries included in their survey 40 per cent had the "most free" print and broadcast media, 20 per cent were "partly free" and 40 per cent were "least free".<sup>19</sup> The "most free" category included 30 Western and Eastern European countries and 33 Third World countries. The USSR was considered "partly free". Generally there has been a move towards slightly more freedom of the press in the world during the 1980s. Latin America after the military dictatorships and Eastern Europe after 1989 are examples of this. In Africa too it is possible that thanks to the officially proclaimed move towards multi-party democracy in many states the press will become freer. In Asia and the Middle East most nations were rated "least free" by Freedom House in 1990. Israel, India, Thailand, the Philippines, Japan and Papua New Guinea were rated "most free". In Africa only Botswana and Gambia were rated "most free". In Latin America and the Caribbean only Guyana, Haiti and Cuba were rated "least free". The majority of the remaining Latin American and Caribbean states were rated "most free" whereas the majority of the remaining African states were rated "least free".

In 1991 the apparent move of Africa towards democracy was manifested in the figures of Freedom House.<sup>20</sup> The proportion of "partly

<sup>19</sup> Cf. Sussman, "The Press 1990: Contrary Trends", *Freedom at Issue*, (Freedom House, New York), Jan-Feb 1991, p 51 (the additions should be 63; 62; and 32 respectively).

<sup>20</sup> Cf. Sussman, "Censors Retreat—Except in the Gulf", *Freedom Review*, (Freedom House, New York) (continuation of *Freedom at Issue*), Jan-Feb 1992, p 40.

free” states had risen to 30 per cent largely thanks to the changes in Africa and the “least free” had sunk to 28 per cent. The “most free” category remained relatively stable with its 42 per cent of the 162 countries included in the survey this time. In addition to several African countries<sup>21</sup> Colombia, Peru, the Philippines and Thailand also contributed to the growth of the “partly free” category although not rising but sliding down from the group of “most free” states. The “most free” category in 1991 included 34 Third World countries and 33 Western and Eastern European countries. The USSR was in 1991 still considered “partly free”. Bulgaria and Romania were also rated “partly free” whereas the newly independent Baltic states were rated “most free”.

As far as the actual freedom enjoyed by the press, constitutions and laws alone are no guarantee. As pointed out by Dimitrijevic, for example, all countries of the formerly Socialist Eastern Europe—and the former Soviet Union—had freedom of expression laid down in their constitutions (although this freedom, like all others, was to be exercised in accordance with the general aim of constructing socialism).<sup>22</sup> On the other hand the UK has no written constitution but nevertheless belongs to the “most free” countries. However, there has in fact been a negative government-media trend in the UK in recent years.<sup>23</sup>

<sup>21</sup> Burkina Faso, Cape Verde, Congo, Cote d'Ivoire, Guinea-Bissau, Lesotho, Mozambique, Sao Tomé and Príncipe, Togo, Swaziland and Zambia.

<sup>22</sup> Dimitrijevic, *op.cit.* ch. 1.2.1 (n. 9), pp 64–69.

<sup>23</sup> Cf. Sussman, *op.cit.* (n. 19), p 49; Sussman, *op.cit.* (n. 1), pp 334–336.

## 3. In search of a NWICO

### 3.1 Toward a NWICO

#### 3.1.1 The institutional framework

The discussion about a NWICO has mainly taken place within Unesco. In the 1980s, however, the UN General Assembly became increasingly important as a forum for the debate. The reason for this was among other things the fact that both the United States and the United Kingdom left Unesco.<sup>1</sup> The stormy debates and other Unesco activities relating to a NWICO contributed to the decision of the United States and the United Kingdom to leave the organization.<sup>2</sup>

The work within the UN General Assembly concerning a NWICO has primarily been effected in the UN Committee on Information established in 1978<sup>3</sup> and the Special Political Committee (SPC). As regards the fact that the question of a NWICO was referred to the SPC, it may be noted that up until then matters concerning freedom of information had been handled by the Social, Humanitarian and Cultural Committee (Third Committee) and that matters concerning UN public information activities had traditionally been handled by the Administrative and Budgetary Committee (Fifth Committee). In 1978 these two items were put together and transferred to the SPC, the focus of interest hereafter

<sup>1</sup> The United States withdrew from the organization on the 1 January 1985 and the United Kingdom, and Singapore, withdrew on 1 January 1986.

<sup>2</sup> Cf. Sussman and Sussman, "Mass News Media and International Law", *International Political Science Review*, vol. 7, 1986, p 344. See also Coate, *Unilateralism, Ideology and U.S. Foreign Policy. The United States In and Out of Unesco*, 1988.

<sup>3</sup> UN Gen. Ass. res. 33/115 C, of 18 December 1978. During the first year of existence the Committee was named the "Committee to Review United Nations Public Information Policies and Activities".

becoming the establishment of a NWICO.<sup>4</sup> The transfer of the questions relating to information to the SPC suggests something about the political significance of this item.<sup>5</sup>

As is already obvious three principal parties crystallized in the debate on a NWICO (as in most other global post-World War II debates): The Western countries led by the United States, the former Socialist bloc led by the former USSR and, finally, the Third World countries. The Third World countries have in the NWICO matter mostly been represented by the Movement of Non-Aligned Countries which has been the main driving force behind the demands for a NWICO.<sup>6</sup>

Of course views may differ from country to country among the many Non-Aligned countries. One observer has noticed that the claims emanating from Latin America have tended to be influenced by the Latin American Marxist intellectuals and thus to be ideologically oriented with a strong Marxist foundation. The claims emanating from Africa, on the other hand, have tended to be more practical, founded on real material needs. This is true above all of the countries south of the Sahara. In the Asian case, however, it is not possible to trace any similar single foundation for the attitudes towards a NWICO.<sup>7</sup> Generally speaking, the opposition to the news media of the Western world has united developing countries that are very different among them-

<sup>4</sup> Cf. UN Gen. Ass. res. 3535 (XXX), of 17 December 1975; Questions relating to information, Report of the SPC, UN Doc. No. A/33/511, 16 December 1978, pp 1-2; Questions relating to information, Report of the SPC, UN Doc. A/34/808, 13 December 1979, p 1. See further ch. 3.2.2.

<sup>5</sup> Cf. UN, GAOR, 34th Sess., 1979-1980, Report of the Committee to Review United Nations Public Information Policies and Activities, Suppl. No. 21, (A/34/21), p 12; Powell, "The New World Information Order", *Political Communication and Persuasion*, vol. 1, 1982, p 333.

<sup>6</sup> Cf. Hamelink, op. cit. ch. 2.2 (n. 52), p 2; Gunter, "An Introduction to the Great Debate", *Journal of Communication*, vol. 28, 1978, pp 147-148. The Movement of Non-Aligned Countries has just over a hundred Member States of which an overwhelming majority are developing countries. The Bandung Conference held in 1955 in the city of Bandung, Java, is viewed as the antecedent of the process which eventually led to the formation of the Movement. The First Summit Conference of the Movement of Non-Aligned Countries was held in Belgrade, Yugoslavia, in 1961, on the initiative of Egypt, India and Yugoslavia. The Non-Aligned Movement has advanced over the years of its existence without any constituent charter and has been guided in its activities only by a set of principles and rules formulated in the course of its work. The People's Republic of China, though an important developing country, is not a member of the Non-Aligned Movement. In the UN General Assembly approximately the same group of states as the Non-Aligned Countries is referred to as the Group of 77 (G 77), negotiating as one party. Concerning the Movement of Non-Aligned Countries and the Group of 77, see Alimov, *The Rise and Growth of the Non-Aligned Movement*, 1987; Braillard, *Mythe et réalité du non-alignement*, 1987; *The Nonaligned and the United Nations*, Ed. by M.S. Rajan, V.S. Mani, C.S.R. Murty, 1987; Park, "The Third World as an International Legal System", *Boston College Third World Law Journal*, vol. 7, 1987, pp 37-60; Sauvaut, *The Group of 77. Evolution, Structure, Organization*, 1981.

<sup>7</sup> Cf. Abel, op. cit. ch. 2.2 (n. 47).

selves.<sup>8</sup> Views have differed also within the Western bloc with some Western countries being more sympathetic than others towards the claims emanating from the Non-Aligned countries. Generally, the Western opposition has been led by the US.

We have also seen that the idea of a NWICO, as the name suggests, is closely related to the, generally better-known, concept of a New International Economic Order (NIEO) which was elaborated around the same point in time. In 1974 the UN General Assembly adopted a Declaration on the Establishment of a New International Economic Order.<sup>9</sup> The demand for a NIEO also originated from the Movement of Non-Aligned Countries, or the Group of 77.

The relationship between the two new orders is not completely clear nor undisputed. Some observers contend that a NWICO is a necessary prerequisite of a NIEO while others maintain that the new economic order must come before there can be any new international order in the field of information and communication.<sup>10</sup> The issue has been discussed by the Unesco General Conference without the question of the relationship between the two new orders ever being definitively answered, however.<sup>11</sup>

<sup>8</sup> Cf. Sussman, op. cit. ch. 2.3 (n. 12), p 137.

<sup>9</sup> UN Gen. Ass. res. 3201(S-VI), of 1 May 1974. By res. 3202(S-VI), of 1 May 1974, a programme of action on the establishment of a new international economic order was adopted. Around the idea of a NIEO a particular discipline of law has developed called "international development law". Underlying this direction in law research is the aim to change, through law, the unjust state of the world economy. See for example Agrawal, *Third World and New International Order*, 1985; *International Law and Development*, Ed. by Paul de Waart, Paul Peters and Erik Denters, 1988; Kwakwa, "Emerging International Development Law and Traditional International Law—Congruence or Cleavage?", *Georgia Journal of International and Comparative Law*, vol. 17, 1987, pp 431–455; *Third World Attitudes Toward International Law*, Ed. by Frederick E. Snyder and Surakiart Sathirathai, 1987.

<sup>10</sup> For a further discussion of this relationship see for example Addis, op. cit. ch. 2.1 (n. 1), p 548; Balle, op. cit. ch. 1.2.1 (n. 21), pp 475–476, 485; Chen, op. cit. ch. 2.1 (n. 1), p 254; Comment, 1983, op. cit. ch. 2.2 (n. 18), p 574; Condorelli, op. cit. ch. 2.2 (n. 8), pp 125–126; Gunter, op. cit. (n. 6), p 143; Hamelink, op. cit. ch. 2.2 (n. 52), p 20; Ioannou, "The New International Information Order and the New International Economic Order (a Survey of Developments)", *Thesaurus Acroasium*, vol. XII, 1982, pp 375–444; Mankekar, op. cit. ch. 2.1 (n. 2) p 222; *Many Voices—One World. Towards a new more just and more efficient world information and communication order*. Report by the International Commission for the Study of Communication Problems, 1980, pp 35–39; Martelanc, op. cit. ch. 2.1 (n. 4), p 13; Masha, op. cit. ch. 2.2 (n. 57), p 338; Masmoudi, "The New World Information Order", Unesco, *International Commission for the Study of Communication Problems*, No. 31, 1978, pp 21–24; Pavlic and Hamelink, *The New International Economic Order: Links between Economics and Communications. Reports and Papers on Mass Communication* No. 98, 1985; Sepetu, op. cit. ch. 2.1 (n. 50), p 59; Szulczewski, op. cit. ch. 2.2 (n. 49), pp 121–122.

<sup>11</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 142; Unesco Gen. Conf., 21st Session, 1980, Report of Commission IV, p 177; Unesco Gen. Conf., 23rd Sess., 1985, Report

The fact that the new orders are closely related in the opinion of the members of Unesco is also illustrated by the adoption of a resolution, in 1974, unfolding "Unesco's contribution to the establishment of a new international economic order."<sup>12</sup> In this resolution the General Conference recognizes that Unesco's contribution to the promotion of a "new economic and social order (sic!)" should be, *inter alia*, "through the free and balanced flow of information and democratic use of the information media."<sup>13</sup> The notion of "a free and balanced flow of information" became an important component also of the demands for a NWICO. It may be noted that it was on this occasion in 1974 that this notion entered into the programme of activities of Unesco.

The Non-Aligned countries declared for their part at the fifth Conference of Heads of State or Government in 1976 that: "A new international order in the fields of information and mass communications is *as vital as* a new international economic order (emphasis added)."<sup>14</sup> The preceding Conference of Information Ministers had stressed that "the establishment of a New International Order for Information is *as necessary as* the New International Economic Order (emphasis added)."<sup>15</sup> The actual concept "the New International Information Order" is supposed to have been coined, and thereby introduced into the international discussion, at a Symposium of Non-Aligned Countries on Information, proposed by Tunisia, which was held in Tunis in March 1976.<sup>16</sup>

Concerning the relationship between the NIEO and the NWICO, finally, according to the preamble of a resolution of the UN General Assembly in 1980, "the establishment of a new world information and communication order '*is linked to*' the new international economic

⇒ of Commission IV, p 191.

<sup>12</sup> Unesco Gen. Conf. res. 12.11, 18th Sess., 1974.

<sup>13</sup> *Ibid.*, part I, operative para. 5.

<sup>14</sup> Political Declaration of the 5th Summit Conference of Non-Aligned Countries, August 1976, Colombo, quoted from *New International Information and Communication Order. Sourcebook*, Ed. by Kaarle Nordenstreng, Enrique Gonzales Manet and Wolfgang Kleinwächter, IOJ, 1986, p 288.

<sup>15</sup> Declaration of the Ministerial Conference of Non-Aligned Countries on Decolonization of Information, 13 July 1976, New Delhi, quoted from *New International Information and Communication Order. Sourcebook*, *ibid.*, p 285.

<sup>16</sup> See, although the concept itself is not recorded, Report (excerpts) of the Non-Aligned Symposium on Information, 30 March 1976, Tunis, and Report of Committee: The Emancipation of Mass Communication Media in the Non-Aligned Countries, quoted from *New International Information and Communication Order. Sourcebook*, *ibid.*, pp 276-284. This symposium was referred to in Unesco Gen. Conf. res. 4.142, 19th Sess., 1976, where the Director-General is invited "to pay very special attention to the activities of the bodies [...] responsible for co-ordinating and implementing the information programme of the non-aligned countries".

order and is 'an integral part of the international development process' (emphasis added).<sup>17</sup> The connection is also evident from the mandate of the Committee on Information.<sup>18</sup>

It was in the early 1970s that the debate on the issues which later were to be assembled under the umbrella term of a NWICO started gathering momentum within Unesco, although related thoughts had been expressed in Unesco in the 1960s.<sup>19</sup> According to the former Director-General of Unesco, Amadou-Mahtar M'Bow from Senegal, it was during the 1960s, with the appearance on the international scene of the newly liberated developing countries and their constantly more active participation in the discussions of the international community that Unesco started taking seriously the problems of the circulation of information in the world.<sup>20</sup>

In 1970, two significant initiatives were taken by Unesco. Firstly, Unesco initiated a programme to assist governments in formulating national communication policies, the point being that the public authorities in the developing countries should be encouraged to make use of the mass media in their overall development efforts.<sup>21</sup> Mass communication should henceforward be seen as a public service, according to the unanimous delegates of the Programme Commission.<sup>22</sup> The resolution

<sup>17</sup> UN Gen. Ass. res. 35/201, of 16 December 1980. Cf. also UN, GAOR, 34th Sess., 1979–1980, Suppl. No. 21, Report of the Committee to Review United Nations Public Information Policies and Activities, Doc. No. A/34/21, p 17; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 8; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 12; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, p 10.

<sup>18</sup> See further ch. 3.3.

<sup>19</sup> Cf. *Department of State Bulletin*, Vol. 81, No. 2055, 1981, statement by James Buckley, p 69; Gunter, "An Introduction to the Great Debate", *Journal of Communication*, vol. 28, 1978, p 145. Cf. also Comment, 1983, op. cit. ch. 2.2 (n. 18), p 575. A related debate concerned satellites and prior consent to foreign satellite broadcasting. See Unesco Gen. Conf., 17th Sess., 1972, res. 4.111, "Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education and Greater Cultural Exchange". Later this Declaration was followed by UN Gen. Ass. res. 37/92, of 10 December 1982, "Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting". Concerning prior consent to direct satellite broadcasting see for example Addis, op. cit. ch. 2.1 (n. 1), pp 531–533; Fisher, *Prior Consent to International Direct Satellite Broadcasting*, 1990; Ioannou, "The New International Information Order and the New International Economic Order (a Survey of Developments)", *Thesaurus Acroasium*, vol. XII, 1982, pp 410–414; *Syracuse Journal of International Law and Commerce*, vol. 8, No. 2, 1981.

<sup>20</sup> Cf. M'Bow, 1982, "Le Nouvel Ordre Mondial de l'Information", *Studia Diplomatica*, vol. 35, 1982, p 319.

<sup>21</sup> Cf. Unesco Gen. Conf. res. 4.21 item (e); Programme and Budget for 1971–1972, Doc. No. 16 C/5 Approved, Section 4.21 Research and Studies in Mass Communications, pp 325–328.

<sup>22</sup> Unesco Gen. Conf., 16th Sess., 1970, Report of the Programme Commission, p 113.

on mass communication policies is significant in that it opens the door to government involvement in the field of mass communication which became a salient subject of contention in the subsequent NWICO debate along with the issue whether or not the mass media should be used for certain purposes.

The issue of quantitative and qualitative imbalances in the international information flow was also prominent in the debate in the Programme Commission in 1970. The national communication policies which the developing countries were encouraged to elaborate were supposed to be of help also in reversing the international information imbalances.<sup>23</sup>

On a more general level, the 16th session of the General Conference was significant in that Unesco from now on shifted its focus from the technical problems of the media, such as the training of journalists and facilitation of communication infrastructures, to the *content* of news and the role of the media in society.<sup>24</sup> Concerning the Western reaction to the Unesco policy switch, Chen writes that, initially, the Western governments did not pay much attention to it, partly because of the Western practice in viewing information as within the private domain and partly because of a general indifference to Unesco.<sup>25</sup> It was not until the middle of the 1970s that the Western governments started taking what they came to perceive as the Unesco challenge to freedom and the free flow of information seriously. Some observers would use the concept of politicization to describe the Unesco policy shift, as well as that of many other international agencies around the same time.<sup>26</sup>

There was a second significant initiative taken by Unesco in the context of a NWICO in 1970, which, although not directly related to the discussion on communication policies and imbalances in quantity and quality, concerned both the use of the mass media and the content of news. The initiative in question was the adoption of a resolution, submitted by Byelorussia, which called on Member States to "encourage the use of information media against propaganda on behalf of war,

<sup>23</sup> Unesco Gen. Conf., 16th Sess., 1970, Report of the Programme Commission, p 122.

<sup>24</sup> Unesco Gen. Conf., 16th Sess., 1970, Report of the Programme Commission, pp 113, 122-123; see also Report of Commission IV, 1974, p 125. Cf. also Chen, *op. cit.* ch. 2.1 (n. 1), p 267.

<sup>25</sup> Chen, *ibid.*, p 267.

<sup>26</sup> Cf. Wells, *The UN, UNESCO and the Politics of Knowledge*, 1987, which analyzes the concept of politicization in relation to the Unesco debates, primarily, on information, education, science and culture since World War II.

racialism and hatred among nations", and invited the Director-General to report to the next session of the Unesco General Conference on existing legislation and measures taken by Member States for this purpose.<sup>27</sup>

At the next session of the General Conference, in 1972, a resolution was adopted calling for the submission to the General Conference at its following session of a "draft declaration concerning the fundamental principles governing the use of the mass information media with a view to strengthening peace and international understanding and combating war propaganda, racialism and apartheid."<sup>28</sup> This was later to become the Mass Media Declaration. Shevtsova confirms that developing such a document as the Mass Media Declaration "was the idea of the Soviet Union, which proposed it within the Unesco framework as early as 1972."<sup>29</sup> The primary aim of the declaration project was, according to some observers, who are probably right, to bring UN pressure to bear on foreign radio broadcasts to the Soviet Union and Eastern Europe.<sup>30</sup>

Contrary to the case with the resolution on the formulation of communication policies, there was considerable opposition in the Programme Commission against the adoption of the resolution of 1972 on a draft declaration<sup>31</sup> and there had been some opposition also against the adoption of the Byelorussian draft resolution in 1970.<sup>32</sup> This illustrates a trend that would continue, namely that it was somewhat easier for the claims of the developing countries to meet with sympathy among the Western countries than it was for the claims emanating from the Soviet bloc.

Thus there were two currents of opinion which from different starting-points and originally independently of each other were critical of the doctrine of a free flow of information and its results. In spite of their different points of departure, the then Soviet bloc strongly supported the Third World or Non-Aligned claims and the Non-Aligned strongly supported the Soviet bloc claims. Some observers say that the

<sup>27</sup> Unesco Gen. Conf. res. 4.301, 16th Sess., 1970; see also Report of the Programme Commission, p 115.

<sup>28</sup> Unesco Gen. Conf. res. 4.113, 17th Sess., 1972.

<sup>29</sup> Shevtsova, op.cit. ch. 2.2 (n. 27), p 52. Cf. also Cate, op.cit. ch. 2.1 (n. 1), p 388.

<sup>30</sup> Cf. Righter, op. cit. ch. 2.1 (n. 12), pp 66-67. Pinto writes in *La liberté d'information et d'opinion en droit international*, 1984, p 266, note 70, that the Soviet Union proposed the adoption of a resolution, which was never adopted, condemning "ideological aggression" in the UN in 1953.

<sup>31</sup> Cf. Unesco Gen. Conf., 17th Sess., 1972, Report of Commission IV, p 122.

<sup>32</sup> Unesco Gen. Conf., 16th Sess., 1970, Report of the Programme Commission, p 115.

Soviet Union exploited the sincere concern of the developing countries over the North-South flow of information for purposes of its own and that the development of a declaration on the performance of the mass media was a result of this.<sup>33</sup> On the other hand the Non-Aligned countries were also interested in the more ideological aspects of international news transmission. It is probably most correct to say that whereas the Soviet bloc was concerned exclusively with the ideological aspects of the international flow of news and information the Non-Aligned countries were concerned with both the ideological and the more practical (or infrastructural) aspects of this flow.

In any case the interests of the Soviet bloc and the Non-Aligned countries overlapped to a great extent. Accordingly, in course of time the issue of a NWICO merged with the issue of a Mass Media Declaration. The campaign for a NWICO was carried out through the campaign for a Mass Media Declaration and the campaign for a Mass Media Declaration was carried out in the name of a NWICO. The Mass Media Declaration was seen as an important manifestation of the efforts to establish a NWICO.<sup>34</sup> The contents of the original draft declaration were influenced by the fact that the Third World countries became involved in the campaign for it. After the adoption of the Mass Media Declaration in 1978, the continuing campaign for a NWICO gradually took a new turn.

Because of the close relationship between the campaign for a Mass Media Declaration and for a NWICO, some authors argue that in reality it is within the former Soviet bloc that the concept of a NWICO has its roots.<sup>35</sup> This constitutes a misunderstanding, however. It is true that there was an ideological affinity between what the former Soviet bloc stood for and the ideological aspects of the campaign for a NWICO, but the concept of a NWICO clearly has its roots within the Non-Aligned Movement and not within the former Soviet bloc. The close relationship between the concepts of a NWICO and the NIEO, which originated from the Non-Aligned Movement, also points to the fact that the idea of a NWICO comes from the Non-Aligned countries. There is no doubt,

<sup>33</sup> Pick, "The New Information Order", *The Ditchley Journal*, vol. 7, 1980, p 41.

<sup>34</sup> Cf. Unesco Gen. Conf., 19th Sess., Plenary Proceedings, 1976, p 448; 21st Sess., 1980, Report of Commission IV, p 188.

<sup>35</sup> Cf. Balle, op. cit. ch. 1.2.1 (n. 21), pp 462, 485; Graubart, op. cit. ch. 2.3 (n. 2), p 632; Paust, "International Law and Control of the Media: Terror, Repression and the Alternatives", *Indiana Law Journal*, vol. 53, 1977-78, pp 648-649.

however, that the proposal for a Mass Media Declaration originated from the former Soviet bloc.

When the idea of a NWICO by the mid-1970s had taken root in the minds of the representatives of most of the Member States of Unesco—and in the minds of the personnel of Unesco's secretariat<sup>36</sup>—headed by M'Bow—a great number of activities were organized by Unesco on this theme. There were numerous conferences, governmental and non-governmental, seminars and meetings of experts arranged in different parts of the world by Unesco and dealing with different aspects of the NWICO issue.

The International Commission for the Study of Communication Problems, better known as the MacBride Commission after its chairman Sean MacBride from Ireland, was established under the auspices of Unesco in 1977 with the impressive task of carrying out a study of all communication problems in present day society.<sup>37</sup> The Commission produced a comprehensive report which was called "Many Voices—One World. Towards a new more just and more efficient world information and communication order" and was published by Unesco in 1980. Like the Commission the report is usually referred to as the MacBride Report.

The report attracted some attention in its time and was criticized by Western observers for being too favourable towards government involvement in the mass media field at the expense of commercial private media.<sup>38</sup> The report included a great number of recommendations for future international efforts in the field of information and communication on both international and national levels, mostly focussing on issues connected with the problems of the developing countries. It is explicitly stated that the report was intended to provide a framework for the development of a NWICO.<sup>39</sup> Some countries nevertheless criticized

<sup>36</sup> Cf. Balle, *ibid.*, who writes that the Unesco secretariat "a fait siennes les thèses non alignées sur l'urgence d'une 'circulation équilibrée' de l'information" (p 477). The role played by the secretariat itself is debated: some claim that the Unesco secretariat has worked actively in favour of a NWICO, while others argue that the secretariat merely carried out the decisions of the Member States and played no independent role.

<sup>37</sup> Cf. Unesco, Medium-Term Plan 1977–1982, Doc. No. 19 C/4 Approved, Annex II, Guidance note on Objective 9.1, p 368; cf. also *Many Voices—One World. Towards a new more just and more efficient world information and communication order*, *supra* (n. 10), p 295.

<sup>38</sup> Cf. Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, p 178.

<sup>39</sup> *Many Voices—One World. Towards a new more just and more efficient world information and communication order*, *supra* (n. 10), p 254.

the report for being too vague in this respect and not delineating the NWICO with sufficient precision.<sup>40</sup>

Some leading spokesmen for a NWICO from developing and/or Non-Aligned countries were members of the MacBride Commission. The most important one was Mustapha Masmoudi, former Tunisian Secretary of State for Information and permanent delegate of Tunisia to Unesco. Masmoudi acted as the ideological forerunner of the Non-Aligned countries in the field of information and communication and contributed with an influential article to the series of documents prepared for the MacBride Commission.<sup>41</sup> Bogdan Osolnik, a journalist and politician from Yugoslavia, was also a prominent NWICO advocate and member of the MacBride Commission as was Juan Somavía, from Chile, executive director of the Latin American Institute for Transnational Studies in Mexico City.<sup>42</sup> The Soviet bloc was represented in the MacBride Commission by the then Director-General of the TASS news agency Sergei Losev. In the NWICO connection the most prominent Western member of the MacBride Commission (apart from its chairman) was Elie Abel, journalist and university professor from the United States.

Contributors to the NWICO debate have evidently been a large number of academic researchers, journalists,<sup>43</sup> publishers,<sup>44</sup> officials and

<sup>40</sup> Cf. Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, pp 177–178.

<sup>41</sup> Masmoudi, "The New World Information Order", Unesco, *International Commission for the Study of Communication Problems*, No. 31, 1978. This article was subsequently rewritten and published under the same title in *Journal of Communication*, vol. 29, 1979. See also *The New World Order for Information*, published by the Secretariat of State for Information, Tunisia, 1977, with an introduction by Mustapha Masmoudi; *The New World Information Order*, Document prepared by a group of Tunisian and international experts under the chairmanship of Mustapha Masmoudi, published by the Secretariat of State for Information, Tunisia, 1978.

<sup>42</sup> Somavía has also served as a member of the board of directors of the International Press Service (IPS) which is an international news agency co-operative of Third World journalists established in 1964. Latin America was also represented in the MacBride Commission by the then future Nobel Prize winner in literature, Gabriel García Márquez.

<sup>43</sup> An organization which has been heavily involved in the struggle on the side of the advocates of a NWICO is the International Organization of Journalists (IOJ) created in Copenhagen in 1946 by journalists from 21 countries. The IOJ has its headquarters in Prague. The president of the IOJ is the Finnish professor of communication Kaarle Nordenstreng who has been an important profile among the NWICO advocates. This organization's Western counterpart is called the International Federation of Journalists (IFJ). It was established in 1952 and is based in Brussels. It is composed of national journalists' unions in 24 countries, including the United States. Generally opposing the establishment of a NWICO, the IFJ has not become as involved in this discussion as the IOJ.

<sup>44</sup> Concerning newspaper campaigns related to Unesco and the debate on a NWICO, see Giffard, *Unesco and the Media*, 1989; Heacock, *UNESCO and the Media*, 1977. Cf. also Coate, op.cit. (n. 2).

politicians from all around the world who have been influenced by and in their turn have influenced and supported one or the other of the opposing blocs in the inter-governmental fora. In fact, more or less the same arguments for and against a NWICO have appeared in the Unesco and the UN General Assembly official documents as in the publications of external non-official observers. Because academic researchers, newspaper workers of various categories and other “unofficial thinkers” have had a large influence on the information order debate<sup>45</sup> their writings are cited extensively in this study in addition to statements made by official delegates to international inter-governmental fora. Sometimes academic authors and others have also taken part in the NWICO debate in the capacity of members of official delegations to Unesco inter-governmental conferences. The extent to which the different arguments put forward in the debate, within and outside the official inter-governmental fora, have been officially sanctioned by the organizations in question will be seen when the relevant resolutions and declarations are discussed later.

Finally a few words will be said about the title of the new information order. Not only have the contents of the NWICO been controversial, its very name has been the subject of controversies too. Like the fact that questions relating to information were transferred to the SPC of the UN General Assembly when the NWICO debate came into the picture, the controversies relating to the name of the new information order also suggests something about the political significance of the NWICO issue.

The Non-Aligned official terminology started out as the “New International Information Order”<sup>46</sup> but has in time been changed into the “New International Information and Communication Order”.<sup>47</sup> The OAU has used the same terminology as the Non-Aligned.<sup>48</sup> The Non-

<sup>45</sup> The creation and work of the MacBride Commission is an example of this. Another example is the many expert conferences arranged by Unesco on communication issues during the height of the NWICO debate whose results then influenced the delegates to Unesco and the Unesco secretariat.

<sup>46</sup> Cf. Resolution on the New International Information Order of the Fourth Meeting of the Intergovernmental Council for Coordination of Information Among Non-Aligned Countries, 7 June 1980, Baghdad, operative para. I, quoted from *New International Information and Communication Order. Sourcebook*, supra (n. 14), p 302.

<sup>47</sup> Cf. Declaration of the Jakarta Conference of the Ministers of Information of Non-Aligned Countries, 30 January 1984, Introduction, para. 1, quoted from *New International Information and Communication Order. Sourcebook*, ibid., p 312.

<sup>48</sup> Cf. OAU, Resolutions and Recommendations adopted by the OAU Council of Ministers, vol. III, Addis Ababa, 1987, Resolution on the New International Information Order, No. 897, p 455.

Aligned terminology has sounded too radical for the Western states and has never been endorsed by Unesco or the UN General Assembly.

In Unesco and UN General Assembly resolutions the new information order has been called a “New World Information and Communication Order”, a “New World Information and Communication Order, seen as an evolving and continuous process”, a “new, more just and more balanced world information and communication order”, and a “new, more just and more effective world information and communication order”. In the title of the MacBride Report the new order was referred to as a “new, more just and more efficient world information and communication order”.

A “NWICO” became the most common official name of the new order in Unesco and the UN General Assembly and is used by this author both for that reason and for practical reasons.

Two authors in a contribution to the Unesco series Reports and Papers on Mass Communication use the compromise formula a “new international/world information-communication order”.<sup>49</sup> In the relevant literature the name a “New World Information Order” has also been used.

It can be noted that the definite article “the” has never been used in front of any variation of the name of the new information order in official Unesco and UN General Assembly documents, whereas the Movement of Non-Aligned countries always uses the definite article in front of its official denominations of the new order. The “the” sounded too threatening for the Western countries and was understood as implying that there existed an agreed upon new information order at hand that could, and should, be implemented immediately.

The amendments “world”, “more just”, “effective”, “efficient”, “and communication” and, lastly, “seen as an evolving and continuous process” were also all made in order to “Westernize” the name of the new information order, i.e. to make it more acceptable or less unacceptable to its opponents.

“World” sounded less subversive than “international” and was also inserted in order to minimize the connotations of the new information order with the NIEO. “Communication” was supposed to lead thoughts to the technical aspects of the transmission of information, and so was

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adopted in June 1981.

<sup>49</sup> Pavlic and Hamelink, *op. cit.* ch. 2.2 (n. 52), p 21.

“effective” and “efficient”. The term “information”, on the other hand, was considered to lead thoughts to the content of the information being transmitted and by letting the term “information” stand alone the opponents of a NWICO were afraid that it would seem as if they were accepting regulation of content. “Just” was supposed to imply that the new order should be just both for the developing countries and the West. “More” just and effective signified that there was going to be no radical break with the prevailing order. The addition “seen as an evolving and continuous process” was also intended to emphasize further that it was not question of an order which could be imposed from one day to another but that the new order would have to develop gradually.

### 3.1.2 The question of licensing journalists

A particular package of devices constituting part of the desired NWICO has included the licensing and subsequent protection of journalists and the drawing up of an international code of ethics for journalists and the mass media which is supposed to be connected with the licensing scheme.<sup>50</sup> The basic idea behind an international licensing and protection system is that foreign correspondents who hold a licence card shall be protected against violence in the countries where they work. The idea of an international code of ethics is related to the contents of what the foreign correspondents report.

An international code of ethics for journalists was discussed in the UN General Assembly already in the early 1950s, but the efforts to draw up such a code ceased rather quickly because of the same ideological conflict which made the conclusion of a Convention on Freedom

<sup>50</sup> Concerning the issue of licensing, protection and code of ethics cf. Unesco Gen. Conf., 16th Sess., 1970, Report of the Programme Commission, p 113; 17th Sess., 1972, Report of Commission IV, pp 112–113; 18th Sess., 1974, Report of Commission IV, pp 124, 126; Unesco, Summary of Interventions, 1976, p 19; 20th Sess., 1978, Report of Commission IV, pp 142, 146; 21st Sess., 1980, Report of Commission IV, pp 166, 179; 22nd Sess., 1983, Report of Commission IV, p 140; 23rd Sess., 1985, Report of Commission IV, pp 195–196. See also Aggarwala, op. cit. ch. 2.1 (n. 3), pp 14–18; Kraemer, “Freer Expression or Greater Repression? UNESCO and the Licensing of Journalists”, *Communications and Entertainment Law Journal*, vol. 7, 1984, pp 39–84. Masmoudi, Osolnik and Somavia have all strongly favoured an international code of journalistic ethics: Masmoudi, 1979, op. cit. ch. 2.1 (n. 11), pp 183–184; Osolnik, op. cit. ch. 2.1 (n. 59) p 14; Somavia, “The Transnational Power Structure and International Information”, *Development Dialogue*, (Uppsala), 1976, p 26. Measures for the protection of journalists have been advocated by Sean MacBride, cf. *Many Voices—One World. Towards a new more just and more efficient world information and communication order*, supra (n. 10), pp 234–236, 264.

of Information impossible.<sup>51</sup> In the early 1970s efforts were made in the General Assembly to create an International Convention on the Protection of Journalists Engaged in Dangerous Missions, but again the efforts were fruitless.<sup>52</sup> An article protecting war correspondents was inserted in Protocol I, of 1977, to the Geneva Conventions of 1949, however, but no attention has been paid to this article when the more general licensing and protection of journalists has been called for in connection with the debate on a NWICO.<sup>53</sup>

An international licensing system, as conceived within the context of a NWICO, could imply that all foreign correspondents would have to be officially licensed, or, to put it differently, that carrying out international journalism without a licence would be prohibited. If a licensed journalist did not conduct his or her reporting in accordance with the international code of ethics, which is supposed to be tied to the licensing scheme, the supposed international licensing agency supervising the activities of the journalists would then be able to retract his or her licence and in that way prevent further reporting. Finally the conduct of journalism by a person without a licence could also theoretically be punished by the international licensing board.

What the critics of the desired licensing and code of ethics have feared is that the potential international licensing agency would take away the licence from reporters who provide the "wrong" news or not grant licences to certain reporters at all. In this way, although it sounds good to protect journalists by way of a licensing system, close control could at the same time be exercised over the reporters. One of the main problems of the proposed international licensing discussed within the NWICO framework was that it was supposed to have an inter-governmental basis, as opposed to a strictly professional one.

According to the national law of some countries, journalists already have to be licensed to be allowed to practise the profession of journalism. As we have seen earlier the Inter-American Court of Human Rights in an advisory opinion tried the question whether the Costa

<sup>51</sup> Cf. UN Gen. Ass. res. 635 (VII), of 16 December 1952.

<sup>52</sup> These efforts are closely dealt with in Young, "Journalists Precariously Covering the Globe: International Attempts to Provide for Their Protection", *Virginia Journal of International Law*, vol. 23, 1982, pp 143-152.

<sup>53</sup> Adopted on 8 June 1977, entered into force on 7 December 1978, 16 ILM 1391, Article 79. The protection of journalists under Protocol I to the Geneva Conventions is, however, mentioned in the MacBride Report, op cit. (n. 10), pp 234, 264.

Rican licensing scheme constituted a violation of international law. The conclusion of the majority of the members of the Court was that the law on the licensing of journalists does in fact conflict with the American Convention of Human Rights (Article 13) if the compulsory licensing of journalists denies some persons access to the full use of the mass media, e.g. by allowing licences exclusively to persons having a certain educational background.<sup>54</sup>

If it did not interfere with the free flow of information “regardless of frontiers” a licensing system on the international level would not be unlawful in principle. There are great risks, however, that an international licensing system would in fact come to interfere with the free flow of information, especially if governments are involved in the granting and withdrawing of licenses. It is also questionable how much protection a licence card would actually give a foreign correspondent faced with hostile local authorities. Also, the presumed international code of ethics against which the conduct of journalists would be judged would constitute a potential threat to the free international flow of news because of the different ideologies regarding the role of the press, more or less conducive to freedom of information, which would have to be intermingled in such a code. The expressions used in an international code of ethics would, furthermore, no doubt be open to very different interpretations depending on who is applying the code. This also constitutes a potential threat against the free flow of news especially if ill-intentioned governments are involved in the interpretation.

Despite the controversies surrounding the issue, a non-governmental consultative conference was indeed convened in Paris in February 1981 under the auspices of Unesco to consider among other things “the protection of journalists”. For some reason (some claim out of forgetfulness while others claim by deliberate exclusion) no Western journalists were invited to the conference. At the last minute, however, they too were invited after having expressed their strong desire to participate.<sup>55</sup>

Because of the strong Western opposition to the proposals prepared for this conference no international body was created with the task of ensuring the protection of journalists.<sup>56</sup> Some observers say that the

<sup>54</sup> Advisory Opinion OC-5/85 of November 13, 1985, see *supra* ch. 1.3.4 (n. 84).

<sup>55</sup> Cf. Chen, 1985, *op. cit.* ch. 2.1 (n. 1), pp 277–278; Kraemer, *op. cit.* ch. 1.2.2.2 (n. 70), pp 49–51; Pinto, *op. cit.* ch. 1.2.1 (n. 18), pp 314–316.

<sup>56</sup> The US, although vigorously opposed to licensing at Unesco, sometimes require reporters to have

possible licensing of journalists is the element of the desired NWICO that has caused the strongest opposition in the West. This is particularly the case among the mass media personnel themselves, especially among those who have suffered harsh treatment by the authorities in countries advocating licensing and protection. According to Morten Giersing at the Unesco secretariat, there has been a sincerely felt fear among journalists of the possibility of "protection" as an element of a NWICO, particularly among US journalists.<sup>57</sup>

The proposed international agency at the Paris meeting, the "Commission for the Protection of Journalists", would have been responsible for issuing identification cards to journalists. It would also have judged complaints about reporters' professional conduct and elaborated ethical rules and regulations governing the journalism profession. The Commission would have been empowered to withdraw a reporter's identity card if it determined that his conduct did not conform to "generally accepted rules of professional ethics".<sup>58</sup> According to the original proposal the Commission would start working with professionals as members but in time develop into an official international organ composed of government representatives.<sup>59</sup>

The American Bar Association's Section of International Law, stated that one of the reasons for the Western opposition to such a Commission was that, as The New York Times commented on February 17, 1981, "Americans, among others, 'generally accept' none of the ethics of many of their would-be judges, including the Russians and such third-world nations as Libya".<sup>60</sup> Today the view of the Russians in this respect may be different.

In reaction to this Unesco sponsored conference, Western and other "free" news organizations opposing a NWICO convened an alternative conference in Talloires, France, in May 1981, which lasted for two days and resulted in a document usually referred to as the Talloires Declara-

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a licence. Cf. Note, "Licensing of Journalists under the Trading with the Enemy Act: an Impermissible Form of Censorship", *Boston University International Law Journal*, vol. 3, 1985, pp 457-476.

<sup>57</sup> Information obtained during interview with Morten Giersing, Division of Communication Development and Free Flow of Information, Unesco, Paris.

<sup>58</sup> Cf. "Report by the American Bar Association's Section of International Law", in *Issues in International Information*, Vol. I, 1981, p 6.

<sup>59</sup> Cf. Kraemer, op. cit. ch. 1.2.2.2 (n. 70), p 49.

<sup>60</sup> Quoted from *Issues in International Information*, Vol. I, 1981, p 6.

tion (of 17 May).<sup>61</sup> Nordenstreng compares the Talloires Declaration to a "Magna Carta of the free press".<sup>62</sup>

The matter of the licensing and protection of journalists and of the elaboration of an international code of journalistic ethics has not so far been carried further in Unesco.

### 3.1.3 The creation of the Non-Aligned News Agencies Pool

In order to contribute to the realization of a NWICO through practical measures, the Movement of Non-Aligned Countries has within its organization created a Non-Aligned News Agencies Pool (NANAP). The superior aim of the Non-Aligned Pool is to make a contribution to the redress of "the current and historical information imbalance", and to become a factor in achieving "true emancipation" of the flow of information to and from the people of the developing countries.<sup>63</sup> The creation of a News Agencies Pool of Non-Aligned Countries is, furthermore, a manifestation of the theory and practice of self-reliance.

The imbalances concern, as we have seen, both the volume of the international news flow and the content of the disseminated news. Therefore the purpose of the Non-Aligned Pool is to bring greater balance to the quantitative flow of news itself and to bring greater representation in this flow of the point of view of Non-Aligned and developing countries on issues both of global and particular concern.<sup>64</sup> This is supposed to lead, *inter alia*, to a larger number of so called constructive or development news items in the international news flow.<sup>65</sup> Further-

<sup>61</sup> This Declaration is reproduced in Nordenstreng, *The Mass Media Declaration of UNESCO*, 1984, p 458. Cf. also *Voices of Freedom. A World Conference of Independent News Media*, Working Papers, Talloires, France, May 15-17, 1981.

<sup>62</sup> Nordenstreng, *ibid.*, p 251. A year earlier, in 1980, another conference of NWICO advocates was held which resulted in a "Magna Carta" of the NWICO advocates, the Mexico Declaration (Reproduced in Nordenstreng, *ibid.*, p 454).

<sup>63</sup> Cf. Jain, "Non-Aligned Press Agencies Pool. A Step Towards a New International Information Order", *Review of International Affairs*, (Belgrade), vol. XXIX, No. 673, 1978, pp 19-20. See further Evaluation Survey, "Functioning and Impact of the Non-Aligned News Agencies Pool", Final Report, Ed. by Zrinjka Perusko Culek, *Institute for Development and International Relations (IRMO)*, Zagreb, 1989?; Fenby, *op. cit.* ch. 2.3 (n. 12), pp 229-237; Ivacic, "Information System and Non-aligned Countries", *Thesaurus Acroasium*, vol. 15, 1987, pp 213-247; Ivacic, "The Pool of News Agencies of Non-Aligned Countries", In *Communications for Development*, Ed. by Biserka Cvjeticanin, 1989, pp 123-140; Stevenson, *Communication, Development and the Third World*, 1988, pp 83-84; Sussman, *op. cit.* ch. 2.3 (n. 1), pp 146-149.

<sup>64</sup> Cf. Jain, *ibid.*, p 19.

<sup>65</sup> *Ibid.* "Constructive news", according to Jain, at the time of writing Joint Secretary at the Ministry of External Affairs of India, is news items given "in their right frame, with the right objectivity and

more the Pool contributes to the increase of “horizontal” news exchange, i.e. between the developing countries themselves, as opposed to the dominant “vertical” news exchange by way of Paris, London or New York. It is also hoped that the Non-Aligned news service will be used by the developed countries and thereby affect the amount and contents of news about the developing world spread in the developed world. The Non-Aligned Pool is on the whole considered an important means in the struggle to carry a NWICO into effect.

Article 5 of the Statute of the News Agencies Pool states that:<sup>66</sup>

“Objective information is the premise of the Pool with the view to promoting co-operation and strengthening the unity of the member countries of the Non-aligned Movement and the decolonization of information. The Pool also promotes a free and balanced flow of information on economic, social and cultural development and events in the non-aligned and other developing countries and in territories still struggling for national liberation and liquidation of colonialism.”

And according to Article 6 of the Statute:<sup>67</sup>

“By disseminating objective and factual information, the Pool will project a true and adequate image of the non-aligned and other developing countries.”

Objective, factual, true and adequate information are terms often used by the critics of the present state of the international news flow, i.e. the advocates of a NWICO, to indicate what they would like to have in the place of today’s biased information flow.

In 1973 at the Fourth Conference of Heads of State or Government of Non-Aligned Countries in Algiers voices were raised for the first time claiming an equalization of the information flow between the North and the South and urging the promotion of a greater interchange of ideas among the developing countries.<sup>68</sup> In answer to the calls for Non-Aligned co-operation also in the field of information, twelve Non-Aligned news agencies started exchanging news already in January 1975.

In 1976 the news exchange mechanism was endorsed by the Non-

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with the right perspective.”

<sup>66</sup> Statute of the News Agencies Pool of Non-Aligned Countries, 24 November 1979, Belgrade, quoted from *New International Information and Communication Order. Sourcebook*, supra (n. 14), p 297.

<sup>67</sup> Ibid.

<sup>68</sup> Action Programme for Economic Cooperation of the Fourth Summit Conference of the Non-Aligned Countries, August 1973, Articles XIII–XIV, quoted from *New International Information and Communication Order. Sourcebook*, ibid., p 275.

Aligned Movement and the Non-Aligned Press Agencies Pool was officially established, following the recommendations of the Conference of Information Ministers of Non-Aligned Countries held in New Delhi in July that year. The Conference of Information Ministers, apart from adopting a declaration on the need for a NWICO stressing that "the establishment of a New International Order for Information is as necessary as the New International Economic Order",<sup>69</sup> also adopted the original Constitution of the Press Agencies Pool and set up its Coordination Committee. The decisions of the New Delhi conference were described as "decolonization in the domain of information". At the governmental level the Non-Aligned Countries have created an Inter-governmental Coordination Council in the field of information and mass media. Originally, the NWICO advocates considered nationalization of news and information functions to be central to their cause, but this claim is probably no longer absolute.

The Fifth Summit Conference of Non-Aligned Countries held in Colombo in August 1976 endorsed the Constitution of the Press Agencies Pool and the establishment of its fourteen-member Coordination Committee with India as chairman. D.R. Mankekar was appointed to be the first chairman. He was succeeded by Pero Ivacic from Yugoslavia, at that time also director of the Yugoslav news agency Tanjug (Telegraph Agency of New Yugoslavia), based in Belgrade. The first business meeting of the Coordination Committee of the Non-Aligned Press Agencies Pool was held in Cairo from 10 to 12 January 1977. Later, in 1985, the Non-Aligned Pool has established an economic information service called the Eco-Pool.<sup>70</sup> It has been decided that income from this economic information service will be used to assist the less developed agencies to improve their participation in the Pool.<sup>71</sup> There also exists a Broadcasting Organization within the Non-Aligned Movement (BONAC).<sup>72</sup>

<sup>69</sup> Declaration of the Ministerial Conference of Non-Aligned Countries on Decolonization of Information, 13 July 1976, New Delhi, quoted from *New International Information and Communication Order. Sourcebook*, *ibid.*, p 285.

<sup>70</sup> For general accounts of the Eco-Pool cf. Trputeć, "The Concept of the Eco-Pool and Priority Information Needs of Developing Countries", in *Communications for Development*, Ed. by Biserka Cvjetanin, 1989, pp 143–159; Srca and Curcic, "The Origins, Current Status and Future Prospects of the Eco-Pool", *Ibid.*, pp 163–196.

<sup>71</sup> Second UN-Unesco round table on a new world information and communication order, Copenhagen, Denmark, 2–7 April, 1986, Final report, UN Doc. No. A/AC.198/97, p 6.

<sup>72</sup> Cf. Evaluation Survey, "Functioning and Impact of the Broadcasting Organization of Non-

The NANAP is not a centralized supranational news service, but constitutes a polycentric system including several Redistributive Centers to which news items are transmitted from the participating agencies and then redistributed. Each agency covers the costs of information transmission and reception. The redistributive agencies (nine at present) cover the costs of translation and inclusion into their news services. According to the Evaluation Survey of 1989 the Pool now gathers over 100 participants, i.e. news agencies or information systems of the Non-Aligned countries and of universal UN organizations.

The Non-Aligned Press Agencies Pool co-operates with the UN Public Information Department. This is an item of particular importance featuring on the agenda of the UN Committee on Information which is the supervisory organ of the Department of Public Information of the UN. This co-operation began in 1975, the same year as the news exchange between Non-Aligned news agencies was initiated and at first consisted of the dispatch to Tanjug, as the coordinator of the Pool, of certain UN reports which Tanjug then included in the daily bulletin of the Pool. Furthermore a number of journalists from the Pool member countries, were included every year in a regular UN training programme for journalists from the developing countries.<sup>73</sup>

Since the founding of the UN Committee on Information, in 1978, co-operation between the Public Information Department and the Pool has greatly improved. The Pool has started co-operating with the UN in reporting on major conferences held within the framework of the UN.<sup>74</sup> In 1982 the tickertapes of the Non-Aligned Press Agencies Pool were put at the disposal of the UN by Tanjug in addition to the already available tickertapes of the world's five largest news agencies (AFP, Reuters, AP, UPI and TASS (now renamed ITAR-TASS)).

In this way, the then member of the Yugoslav delegation to the UN General Assembly, Feodor Starcevic, notes, authentic information from the Non-Aligned countries is equally accessible to the UN Secretariat, delegates of the member countries and accredited newsmen, as information from world press agencies. As the UN uses the daily bulletins both for internal analysis and for informing the world, the importance,

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Aligned Countries", Final Report, *supra* (n. 63).

<sup>73</sup> Cf. Starcevic, "The UN and the New World Order in Information and Communications", *Review of International Affairs*, (Belgrade), vol. XXXIV, No. 803, 1983, p 12.

<sup>74</sup> *Ibid.*

according to Starcevic, of the Pool's tickertape is evident.<sup>75</sup>

The Non-Aligned Countries News Agencies Pool also co-operates with Unesco. In 1986 the Executive Board of Unesco authorized the Director-General of Unesco to sign an agreement with the President of the Co-ordinating Committee of the Non-Aligned News Agencies Pool on co-operation between Unesco and the Pool.<sup>76</sup> This agreement, briefly, provides for reciprocal consultations, reciprocal representation, assistance for technical studies and exchange of information and documents.<sup>77</sup>

The creation of the Non-Aligned News Agencies Pool was considered a great achievement by Third World journalists. The big Western news agencies have reacted with understanding to the development of national news agencies and to the Non-Aligned Pool.<sup>78</sup> Their sympathy is subject to a single reservation, namely that the Non-Aligned Pool does not become a device to block the Western agencies from reporting independently from areas involved.<sup>79</sup> There is no sign yet, however, indicating that the Pool as such has become a device to deny access to foreign correspondents or that the Pool threatens the activities of the major international news agencies in any way.

To date the overall success of the Non-Aligned Pool has been limited, however. As Stevenson writes, even after a decade, it was still invisible in the world's press.<sup>80</sup> The mass media using the international news agencies' messages still tend to prefer the news items coming from the Big Four. This is true even concerning users in the Third World countries including the Third World countries who claim to be in favour of a NWICO.<sup>81</sup> The authors of the Unesco study "Foreign News in the Media: International Reporting in 29 Countries" apropos of

<sup>75</sup> Ibid.

<sup>76</sup> Unesco, Doc. No. 124 EX/33, Paris, 3 April 1986. Item 6.6 of the provisional agenda.

<sup>77</sup> Unesco, Doc. No. 124 EX/33 Annex.

<sup>78</sup> Cf. the statement of Jerry W. Friedheim, executive vice president and general manager of the American Newspaper Publishers Association (ANPA), who supported the establishment and growth of "new and existing international and regional news services", at a hearing concerning Unesco and the freedom of information before the United States Congress, House of representatives, Committee on Foreign Affairs, Subcommittee on International Organizations, 19 July, 1979, p 53 (United States, 96th Congress).

<sup>79</sup> Cf. Tatarian, "News Flow in the Third World: An Overview", in *The Third World and Press Freedom*, Ed. by Philip C. Horton, 1978, p 24.

<sup>80</sup> Stevenson, op.cit. ch. 2.3 (n. 12), p 84.

<sup>81</sup> Cf. Foreign News in the Media: International Reporting in 29 Countries, supra ch. 2.1 (n. 9), p 53.

NANAP, among other so called alternative news sources, state laconically, in 1985, that "[o]bviously, there is a large gap between the practices that might generally be thought to be associated with the new information order, and what is actually happening at the present time."<sup>82</sup>

One reason why customers prefer news items originating from one of the big Western news agencies is probably that their news is considered more interesting and accurate and also, which is very important, that it arrives promptly. According to the disdainful NWICO advocates, the only thing that the big Western news agencies are successful in doing is giving the audience news with the right speed.<sup>83</sup> On the other hand, speed is the most fundamental aspect of the business of news transmission and of the concept of news itself. The Non-Aligned Pool, however, often disseminates news items with considerable delay.

The news items transmitted by way of the Non-Aligned Pool are also characterized by the fact that most countries participating in the Pool do not have a free press. In those countries where the governments control and filter the news flow, the news items furthered to the Non-Aligned Pool from the national news agencies tend to resemble, necessarily biased, official government communiqués with little hard news value. Even Mankekar who is one of the leading spokesmen for a NWICO and a strong supporter of the Non-Aligned News Agencies Pool has agreed that the national agencies participating in the Non-Aligned Pool generally suffer from certain "inhibitions".<sup>84</sup>

At the Second round table on a new world information and communication order, a joint UN and Unesco seminar arranged in Copenhagen in 1986, one participant, describing developments in the Arab region, also remarked that even if most of its countries now had a functioning news agency, the restrictions imposed upon them by national governments often inhibited their use.<sup>85</sup> It was also observed at this seminar that the news distributed by the regional news agencies and the Non-Aligned Pool was underused.<sup>86</sup>

A further reason for the failure of the Non-Aligned News Agencies

<sup>82</sup> Ibid.

<sup>83</sup> Cf. Jain, *op.cit.* (n. 63), p 19.

<sup>84</sup> Mankekar, *op.cit.* ch. 2.1 (n. 2), p 98.

<sup>85</sup> Second UN-Unesco round table on a new world information and communication order, Copenhagen, Denmark, 2-7 April, 1986, Final report, UN Doc. No. A/AC.198/97, p 7.

<sup>86</sup> Ibid.

Pool to gain acceptance to date, according to Stevenson and Cole, is simply a lack of interest on the part of Third World editors in other parts of their own geographic region and even less interest in other parts of the Third World.<sup>87</sup> The apparent lack of interest among Third World mass media in other parts of the Third World is also noted in Unesco's study of international reporting in 29 countries.<sup>88</sup> However, contrary to what Stevenson and Cole have found, according to the Unesco study all the media systems, both in developed and developing countries, strongly emphasized news coming from their own geographic region in their international news reporting.<sup>89</sup>

Stevenson and Cole claim that the lack of development news generally in the media of most of the world reflects more an absence of interest in that kind of information than a lack of access to it.<sup>90</sup> Another observer of the information debate writes that almost every editor he has ever talked with in the Third World has admitted that his readers would not be interested in the bulk of development news coming from the Third World. Not even that which was happening in the editors' own country.<sup>91</sup> This is an observation made by many other, primarily Western, contributors to the NWICO debate too.

A surprising result of a recent evaluation survey of the activities of the Non-Aligned Pool was that not even the participating Non-Aligned News Agencies did provide the Yugoslav redistributive center, which is the most important one, with so called soft news items on "culture, science, development, and sports" from their respective countries.<sup>92</sup> This in spite of the fact that more soft news items from the Third World in the international news flow, as opposed to hard news on "coups and earthquakes", are called for by the Third World representatives in the NWICO debate.<sup>93</sup>

<sup>87</sup> Stevenson and Cole, op. cit. ch. 2.1 (n. 16), p 61.

<sup>88</sup> Foreign News in the Media: International Reporting in 29 Countries, supra ch. 2.1, (n. 9), p 43.

<sup>89</sup> Ibid., p 42.

<sup>90</sup> Stevenson and Cole, op. cit. ch. 2.1 (n. 16), p 61.

<sup>91</sup> Merrill, "A Growing Controversy: The 'Free Flow' of News among Nations", in *Crisis in International News: Policies and Prospects*, 1981, p 159.

<sup>92</sup> Evaluation survey, "Functioning and Impact of the Non-Aligned News Agencies Pool", Final Report, see supra (n. 63), p 6.

<sup>93</sup> Independently of the efforts of the Non-Aligned countries, the Cable News Network (CNN) has started a programme called the World Service which works as a kind of news exchange pool. The World Service receives films from all over the world produced with any technique. The CNN chooses which films to use, edits them and puts them together into a news programme. Subscribers

In the evaluation survey it is stated with regret that the contents of the news items put into the Pool system by the participating agencies refer mostly to “political events and developments, crisis areas, ‘hot regions’, theatres of war.”<sup>94</sup> It is said further that the efforts to make the Pool service more varied and close to universal in coverage succeed only occasionally, “since the agencies from whose output items are selected for the Pool seem to concentrate on political news, devoting a rather small proportion of their dispatches to other areas of life.”<sup>95</sup>

## 3.2 The Unesco Mass Media Declaration of 1978

### 3.2.1 Development and content

The Unesco General Conference adopted the so called Mass Media Declaration by consensus in 1978.<sup>1</sup> The final adoption of the Declaration by the General Conference had been preceded by heated debates carried on over several years, indeed since 1970,<sup>2</sup> both at the General Conference itself as well as within other branches of Unesco. The full title of the Declaration runs, “Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War”.

The Declaration constitutes the major normative outcome of the struggle for a NWICO. The need for a Mass Media Declaration, and later for its effective implementation, was repeatedly emphasized in the General Conference debates. On the other hand, the Member States who were sceptical towards a NWICO were also generally sceptical towards the adoption and later towards the implementation of the Mass Media Declaration and held that instead of using funds on normative

⇒ to the World Service “pay” by contributing material. The fact that any technique may be used and that the only cost for subscribing is the contribution of material, for example the kind of feature stories about life in the Third World which is allegedly lacking in today’s news flow, should make this service attractive to the developing countries.

<sup>94</sup> Evaluation survey, “Functioning and Impact of the Non-Aligned News Agencies Pool”, Final Report, see supra (n. 63), p 6.

<sup>95</sup> Ibid.

<sup>1</sup> Unesco Gen. Conf., 20th Sess., 1978, Doc. No. 20C/20 Rev., adopted by res. 4/9.3/2. The Declaration was approved by acclamation; cf. Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 154.

<sup>2</sup> Cf. Unesco Gen. Conf. res. 4.301, 16th Sess., 1970; Report of the Programme Commission, p 115.

action, Unesco should use its funds on practical action to the benefit of the developing countries.<sup>3</sup> The Western countries were joined by some Third World countries in this view at a late stage in the discussions preceding the adoption of the Declaration.<sup>4</sup>

In the resolution of 1970 referred to above, which was submitted by Byelorussia, the Unesco General Conference affirmed “the inadmissibility of using information media for propaganda on behalf of war, racialism and hatred among nations.”<sup>5</sup> The concrete work with the Mass Media Declaration of 1978 was initiated when the Unesco General Conference at its seventeenth session in 1972 adopted a resolution noting, *inter alia*, “the ever-increasing role played by the mass information media in the intellectual life of society and the shaping of public opinion”, and requesting the Director-General to prepare and to submit to the following session of the General Conference “a draft declaration concerning the fundamental principles governing the use of the mass information media with a view to strengthening peace and international understanding and combating war propaganda, racialism and apartheid.”<sup>6</sup>

The initial declaration project was solely, and clearly, geared towards the content of the information transmitted. In later versions echoes of the demands of the Third World countries for assistance in infrastructure building and for equal access to the international information flow also appeared in the various draft Declarations. The original straightforward guidelines concerning content of information were also significantly modified, but the Mass Media Declaration in its final form still relates primarily to the content of information.

The first draft Declaration following the request expressed in 1972 by the Unesco General Conference was elaborated by the late Swedish professor Hilding Eek and was entitled “Draft Declaration of Fundamental Principles Governing the Use of the Mass Media”.<sup>7</sup>

This original draft provides in Article I that, in addition to the conduct of its governmental information services and their activities

<sup>3</sup> Cf. Unesco Gen. Conf., 18th Sess., 1974, Report of Commission IV, pp 127, 131; 21st Sess., 1980, Report of Commission IV, pp 138, 164.

<sup>4</sup> Cf. Unesco, Summary of Interventions, 1976, p 14.

<sup>5</sup> See n. 2.

<sup>6</sup> Unesco Gen. Conf. res. 4.113, 17th Sess., 1972.

<sup>7</sup> Unesco Doc. No. COM-74/CONF. 616/3, 23 January 1974. Reproduced in Unesco, *New communication order*, No. 9, Historical background of the mass media declaration, (hereafter cited as Unesco, *New communication order*, No. 9), p 18.

beyond its borders, "[e]ach State is internationally responsible for /.../ its national legislation relating to the performance of mass media within its own territory. International responsibility is based on the principles and rules of international law, in particular the Charter of the United Nations." This would seem to mean that a state would be answerable in relation to other states for the content of its national legislation concerning the mass media.

The idea of all-embracing state responsibility for the performance of the mass media is contrary to the generally held conception in the international law doctrine that states are not internationally responsible for acts of private persons or enterprises. Only if the state is negligent in that it does not prevent or punish a private act which conflicts with international law can the state be held responsible.<sup>8</sup> The idea of all-embracing state responsibility for the mass media is also contrary to the Western conception of a free press and to the realization of freedom of expression and information as an individual human right.

In the second draft, in 1974, the article on State responsibility, then Article X, read: "The responsibility of States in the international sphere for the activities of mass media under their jurisdiction is governed by customary international law and relevant international agreements."<sup>9</sup> The states who have ratified the International Covenant on Civil and Political Rights and not made reservations to Article 20 are of course obliged to introduce legislation prohibiting propaganda for war and advocacy of national, racial and religious hatred that constitutes incitement to discrimination, hostility or violence. And those who are parties to the Convention on the Use of Broadcasting in the Cause of Peace, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of all Forms of Racial Discrimination or the International Convention on the Suppression and Punishment of the Crime of Apartheid are similarly obliged to introduce the legislation provided for in these conventions which is also relevant to the activities of the mass media.<sup>10</sup>

<sup>8</sup> On state responsibility for the acts of private persons see for instance Brownlie, *System of the Law of Nations*, Part I: State Responsibility, 1983, pp 159–166.

<sup>9</sup> Unesco Doc. No. 18 C/35, reproduced in Unesco, *New communication order*, No. 9, p 38. There are no indications that any co-ordination ever took place in this matter between Unesco and the International Law Commission which since its creation has been working on a draft instrument on state responsibility.

<sup>10</sup> See ch. 1.3.2 pp 96.

Article VII of the original draft of the Declaration reads: "The right of correction should be accorded foreign governments in cases where they contend that erroneous news reports, diffused by media, injure their relations with other States or their national prestige or dignity." This formulation was too strong for the Western countries. The international right of correction should not be controversial in itself. As we saw in part I of this study it has been laid down in the Convention on the International Right of Correction of 1952.<sup>11</sup> Only very few states have ratified this Convention, however. The states who had not ratified the convention would not want to commit themselves to the international right of correction through the Mass Media Declaration. On the other hand, one may wonder why the states who claimed an international right of correction through the Mass Media Declaration did not instead accede to the already existing international convention. Perhaps a reason for this is that among the Western states, against whose mass media the right of correction considered in the Mass Media Declaration would principally be used, only France is a party to the convention.

Article VII of the first draft Declaration did not limit the right of correction to factual faults made in the news reports, which is the case in the Convention on the International Right of Correction, but governments would be entitled to correct anything which they considered to "injure their relations with other States or their national prestige or dignity." These are broad criteria which relate to just about anything that any government does not like about foreign news reporting about its own country. The second version modifying Eek's proposal and presented to the 1974 General Conference said, "[a] right of correction should be accorded in cases where States contend that erroneous news reports have *seriously* injured their relations with other States or their national prestige or dignity." The items in italics show the major changes compared to the original Eek draft.<sup>12</sup>

In the draft presented in Nairobi in 1976 the corresponding Article X states: "States, institutions or groups which consider that the circulation of erroneous news reports has seriously impaired their action with a view to the strengthening of peace and international understanding, and their efforts to combat war propaganda, racism and apartheid, should be

<sup>11</sup> See ch. 1.1.3 (n. 33).

<sup>12</sup> See above (n. 7).

able to rectify such news reports through the mass media.”<sup>13</sup>

A remnant of this Article, which is not as compelling for the Member States as the earlier versions, has been retained in the final Mass Media Declaration of 1978 (Article V):

“In order to respect freedom of opinion, expression and information and in order that information may reflect all points of view, *it is important that the points of view* presented by *those* who consider that the information published or disseminated about them has *seriously prejudiced their effort to strengthen peace and international understanding, to promote human rights or to counter racialism, apartheid and incitement to war be disseminated* (emphasis added).” The fact that the dissemination of correcting points of view “is important” does not place any obligations on anyone to publish alternative news reports by injured governments. It can be noted that a reference to “freedom of opinion, expression and information” has been inserted in Article V.

Since one of the major complaints behind the demands by the Third World governments for a NWICO is the alleged unfair or untrue picture given of their countries in the international news reporting, one can easily imagine that these governments would like to have the possibility to correct such reports. The criteria contained in the 1976 draft were still general and imprecise enough to allow corrections being forced upon “erring” media at almost any time (although of course, the Declaration would not be legally binding). It is unclear who the “institutions or groups” also having a right of correction according to the 1976 draft were supposed to be. If “states, institutions or groups” made use of their right of correction as laid down in the 1976 draft on every occasion they felt “seriously impaired” by news reports, the mass media of the Western world would have to make much room for corrections. The proposed Article X on the right of correction taken together with Article XII on state responsibility would in fact confer a decisive power to control both the function of the mass media and the content of the mass media messages upon the states concerned. The article on state responsibility had by 1976 been reformulated into: “States are responsible for the activities in the international sphere of all mass media under their jurisdiction.”

From the point of view of the individual, the right of correction

<sup>13</sup> Unesco Doc. No. 19 C/91, reproduced in Unesco, *New communication order*, No. 9, p 65.

sometimes laid down in national legislation can be a way of protecting the human rights and reputation of an individual against the powerful mass media.<sup>14</sup> In a sense, exercising the individual right of correction also constitutes an exercise of the individual freedom to inform. However, the draft Declaration apparently did not have individuals in mind as far as the right of correction was concerned, and the final version which talks about “those” instead of “states, institutions or groups” is probably not aimed at the rights of individuals either.

A non-governmental meeting of experts was convened by Unesco to consider Eek’s original Declaration proposal. Among other things the title of the Declaration was altered by this meeting of experts. The term “‘use’ of the mass media” was changed into “‘role’ of the mass media”. The Western countries have generally opposed the idea that the media should be “used”—by the State—on the whole. Some of the experts at the meeting were of the opinion that “role” of the media more adequately showed that the Declaration was intended primarily as a statement of moral duties resting upon the mass media and was not intended to set out principles that would necessarily be imposed upon the mass media by legislation.<sup>15</sup>

Following the meeting of experts a “Draft Declaration of Fundamental Principles on the Role of the Mass Media in Strengthening Peace and International Understanding and in Combating War Propaganda, Racism and Apartheid” was presented to the General Conference at its eighteenth session in 1974 by the Director-General M’Bow.<sup>16</sup> The articles on the right of correction and state responsibility were kept in the draft, although the latter, Article X, as we have seen, was reformulated into a weaker statement of facts. In the same year, the UN General Assembly for its part adopted the resolutions 3201 and 3202 on the Establishment of a New International Economic Order.<sup>17</sup> We have already been able to note the close conceptual relation between the new economic and information orders. There is an article in the Mass Media Declaration which refers to the NIEO (see further below).

Because of the significant differences in views between the different

<sup>14</sup> Cf. above ch. 1.2.3 p 67.

<sup>15</sup> Cf. The discussion of the experts recorded in Unesco Doc. No. Com-74/Conf. 616/5 and reproduced in Unesco, *New communication order*, No. 9, (pp 22–37), p 27.

<sup>16</sup> Unesco Doc. No. 18C/35, reproduced in Unesco, *New communication order*, No. 9, p 38.

<sup>17</sup> See supra ch. 3.1.1 (n. 9).

delegations, the draft presented to the General Conference in 1974 had no chance of being adopted by general agreement, which was the desired mode of adoption although not necessary from a strictly formal point of view, but was remitted to the Director-General for further revision and consultations. The Unesco General Conference authorized an intergovernmental meeting of experts on this question, more specifically to consider the amendments to the draft declaration proposed at the General Conference, and to prepare another draft for submission to the General Conference at its nineteenth session.<sup>18</sup> At the former meeting of experts the experts had served in their personal capacity.

The text prepared by the intergovernmental meeting of experts, held in Paris in 1975, was the same text which was later presented to the nineteenth session of the General Conference meeting in Nairobi in 1976.<sup>19</sup> The title this time was changed back into, "Draft Declaration on Fundamental Principles Governing the *Use* of the Mass Media in Strengthening Peace and International Understanding and in Combating War Propaganda, Racism and Apartheid (emphasis added)". Most Western delegations and Israel left the preparatory meeting after a new preambular paragraph had been adopted. The amendment had been proposed by Yugoslavia and made reference to UN General Assembly Resolution 3379 of 16 November 1975 in which Zionism was equated with racism.

Here the concept of "use" of the mass media reappeared in the heading of the Declaration. The reason why the term "use", which had been removed from the very first draft Declaration, reappeared was a USSR amendment proposal concerning the title of the draft which was made already during the General Conference in 1974.<sup>20</sup> Since most Western delegates left the intergovernmental meeting which prepared the 1976 draft one can assume that the remaining delegates took the opportunity to make the draft as radical as they wished it to be. Since "use" had already been changed into "role" one time, the unwillingness of the Western delegates of the concept of "use" of the media should have been well-known.

<sup>18</sup> Unesco Gen. Conf. res. 4.111, 18th Sess., 1974.

<sup>19</sup> Unesco Doc. No. 19 C/91, reproduced in Unesco, *New communication order*, No. 9, p 65.

<sup>20</sup> Unesco Doc. Nos. 18 C/COM/DRs 1-11, Amendments to Draft Declaration of Fundamental Principles on the Role of Mass Media in Strengthening Peace and International Understanding and Combating War Propaganda, Racism and Apartheid (Doc. 18 C/35), Proposed during the General Conference at its Eighteenth Session, reproduced in Unesco, *New communication order*, No. 9, pp 43-50, p 45.

The debate concerning the draft Declaration, as well as the excitement generated among outside observers representing the mass media, reached a high point at the nineteenth session of the General Conference in Nairobi in 1976. Although by now several times rewritten, the draft declaration presented at this occasion was also rejected by the General Conference at least in the sense that it was impossible for the Director-General to attain the consensus decision he desired (but which he later did attain). The Western countries were still firmly opposed to the draft Declaration as it then read and the final adoption was once again adjourned by a decision of the General Conference in favour of another round of consultations on the draft.<sup>21</sup> The US Secretary of State Henry Kissinger is supposed to have threatened in 1976 that the US would withdraw from Unesco if the Mass Media Declaration was adopted.<sup>22</sup>

The proponents of the draft Declaration as it then stood were disappointed, of course, by the fact that it was not adopted at the Nairobi session. In order to calm the Declaration proponents and to respond to some extent to their demands the General Conference decided that an expert committee would be created with the task of studying "the totality of the problems of communication in modern society".<sup>23</sup> This committee was established in 1977 and is best known as the MacBride Commission. The same "compromise package", which was worked out by the sub-Saharan representatives at the 1976 General Conference, included a promise by the Western countries that the debate relating to the ideological aspects of the draft Declaration (and consequently of the NWICO issue) would nevertheless continue within Unesco and that a programme concerning transfer of communications technology would be worked out.<sup>24</sup> The latter promise later materialized in the form of the International Programme for the Development of Communication (IPDC) under the aegis of Unesco.<sup>25</sup>

According to the records of the debates in Programme Commission III, the following countries expressed the wish that the draft should be adopted in its then current form at Nairobi: the USSR, Bulgaria, the

<sup>21</sup> Unesco Gen. Conf. res. 4.143, 19th Sess., 1976.

<sup>22</sup> Cf. Cate, *op.cit.* ch. 2.1 (n. 1), p 388.

<sup>23</sup> Medium-Term Plan 1977-1982, Doc. No. 19 C/4 Approved, Annex II, Guidance note on objective 9.1.

<sup>24</sup> Information obtained during interview with Leonard R. Sussman, Freedom House, New York, who was a member of the US delegation to the Nairobi General Conference.

<sup>25</sup> The activities of the IPDC will be returned to in ch. 3.3.1.2.

GDR, Jordan, Poland, Cuba, Vietnam, Algeria, Byelorussia, Sudan, Niger and Syria.<sup>26</sup> Czechoslovakia stated when the Declaration had been adopted in 1978 that it had supported its adoption already in 1976 too.<sup>27</sup> Because of the perceived impossibility of coming any further in the discussions, Japan had also been prepared to accept a later presented modified version of the Nairobi draft which had been prepared during the 1976 General Conference session itself.<sup>28</sup>

An interesting and significant amendment to the draft Declaration of 1976 had been proposed by the USSR at the intergovernmental meeting preceding the Nairobi General Conference. The amendment concerned the first preambular paragraph which in its 1974 form finished by stating that, in accordance with its Constitution, Unesco should "... recommend such international agreements as may be necessary to promote the free flow of ideas by word and image."<sup>29</sup> After "as may be necessary" the USSR proposed the following amendment of the wording: "to promote the exchange of information by word and image at both multi-lateral and bilateral level, the sovereignty of each State being fully and absolutely respected."<sup>30</sup> The amendment was adopted apart from the superfluous words "and absolutely".

An interesting aspect of the USSR amendment is, to begin with, the fact that the concept of "free flow" is withdrawn and replaced with the more orderly "exchange".

Even more interesting, however, is the USSR reference to state information sovereignty. The sovereign right of each state to control the flows of information in and out of its country, and within the borders, has been much emphasized throughout the NWICO debate by the former Soviet bloc countries and by the Third World. This conception is also contrary to the free flow doctrine. In the final version of the Mass Media Declaration the reference to state sovereignty has been removed.

<sup>26</sup> Unesco, Summary of Interventions, 1976, pp 4-5; 8-9; 10; 11; 13-14; 16; 31.

<sup>27</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Statements at the Twenty-Ninth and Thirtieth Meetings of Programme Commission IV, reproduced in Unesco, *New communication order*, No. 9, pp 137-191, statement of Czechoslovakia, p 182.

<sup>28</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Plenary Proceedings, p 449.

<sup>29</sup> Unesco Doc. No. 18 C/35, reproduced in Unesco, *New communication order*, No. 9, p 38.

<sup>30</sup> Unesco Doc. Nos. COM-75/CONF.201/DRs 1-26, Amendments to 18 C/35 Proposed by the Intergovernmental Meeting of Experts to Prepare a Draft Declaration on Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and in Combating War Propaganda, Racism and Apartheid (Unesco House, Paris, 15-22 December 1975), reproduced in Unesco, *New communication order*, No. 9, (pp 51-65), p 55.

In addition to the reference to state sovereignty in the amended preamble, state responsibility was laid down in the very controversial Article XII of the draft Declaration of 1976: "States are responsible for the activities in the international sphere of all mass media under their jurisdiction." Again this is a radicalization of the wording of the text compared with the corresponding Article X in the 1974 draft. No reference to state responsibility for the mass media was retained in the final version of the Declaration. The Western delegates argued at the 1976 General Conference, *inter alia*, that state responsibility for the mass media is contrary to human rights and the freedom of information and/or that parts of the draft Declaration would be unconstitutional in many Member States.<sup>31</sup> Of course, should a state in a particular instance be found internationally responsible for the acts of a private mass media enterprise—under a treaty or under customary international law—the state cannot normally invoke the national constitution or other national laws in its defence.<sup>32</sup>

During the debates at the Nairobi General Conference the USSR answered the Western critique of draft Article XII by stating: "It was not true, as had been alleged in the press, that the draft Declaration would place the mass media under state control or that it would be a threat to freedom of speech and information. It was concerned with other matters. It would place a moral obligation on the State *to protect* (emphasized here) the media in order to ensure that they served the cause of peace. The fact that in the Soviet Union war propaganda, racism and apartheid were banned by law, might be dubbed by some as an infringement of freedom of information, but they considered it humanitarian."<sup>33</sup>

Cuba stated concerning Article XII, "over which there seemed to be most disagreement", that it "... in no way implied State control of the mass media. What it did reflect was the ethical function of the State, whose duty it was to protect society against deliberate distortion of the

<sup>31</sup> Cf. Unesco, *Summary of Interventions*, 1976, pp 1; 2; 3; 4; 5; 6; 7; 11; 27; 28; 32. At the Madrid follow-up conference within the Helsinki process (1980–1983), according to the official report of the Swedish delegation, the USSR still held that states should be made responsible for the content of information and ideas spread through the mass media (*Aktstycken utgivna av utrikesdepartementet* [Documents published by the Swedish Ministry of Foreign Affairs], *supra* ch. 1.2.4 (n. 162), p 38).

<sup>32</sup> This principle finds expression in Article 27 of the Vienna Convention on the Law of Treaties, of 22 May 1969, 1155 UNTS 331.

<sup>33</sup> Cf. Unesco, *Summary of Interventions*, 1976, p 4.

truth by the mass media, just as it protected the individual citizen and his property from attack by criminals. /.../ What was needed was to ensure that the information media stuck to the truth. Article XII /.../ was designed to ensure this by guiding the media towards the objectives of the Declaration, namely the strengthening of peace and international understanding and elimination of war propaganda, racism and apartheid.”<sup>34</sup>

Syria, for its part, did not think that the draft Declaration went far enough in making sure that the mass media were not used to distort or conceal the truth. The Syrian delegate was of the opinion that only “freedom of expression, information and opinion *with a view to spreading the truth and disseminating accurate information* (emphasis added)” were fundamental human rights and accordingly proposed an amendment to the preamble with that import, “since there could be no real freedom unless it was used to make known the truth.”<sup>35</sup> Syria also did not think that Article XII on State responsibility went far enough. After stating that states are responsible for the activities of the mass media under their jurisdiction, Article XII should say: “Each State should also do its utmost to ensure that the mass media not under its direct jurisdiction operate in accordance with the objectives of the Declaration.”<sup>36</sup>

Byelorussia reiterated the Soviet bloc view that “[t]he media today carried a great responsibility in the field of international relations and it was essential that this responsibility should be firmly based on international legal instruments.”<sup>37</sup> Hungary joined in saying that “there could be no effective work for peace and international understanding without an internationally-accepted set of principles for guiding the mass media because of the enormous power which the media wielded today.”<sup>38</sup> The Congolese delegate said that “the draft Declaration should be taken as a starting point for the major task, in which all must participate, of finalizing a text that would be binding upon States, journalists, radio and television producers, writers and directors and would ensure that their activities contribute to peace, international solidarity and mutual understanding.”<sup>39</sup>

<sup>34</sup> Ibid., p 13.

<sup>35</sup> Ibid., p 35.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid., p 15.

<sup>38</sup> Ibid., p 24.

<sup>39</sup> Ibid., p 36.

The Ukraine delegate, finally, “failed to understand how some delegations could see in the draft Declaration an attempt to impose State control over the media /.../ To say that those who supported it were in favour of State control was equivalent to saying that those who were against it were in favour of war propaganda, racism and apartheid.”<sup>40</sup>

Another Article in the 1976 draft the formulation of which the Western world could not accept was Article XI concerning professional codes of ethics for journalists, another important aspect of the desired NWICO: “It is the duty of professional organizations in the field of mass communication to define and promote standards of professional ethics on a national and international level and to support their members in the responsible exercise of their profession.” This subject is dealt with in Article VIII in the final Mass Media Declaration of 1978 in a considerably modified form: “Professional organizations, and people who participate in the professional training of journalists and other agents of the mass media and who assist them in performing their function in a responsible manner should attach special importance to the principles of this Declaration when drawing up and ensuring application of their codes of ethics.” This is also the only place where the controversial word “responsible” appears in the Declaration. In earlier drafts it appeared more often in the form of state responsibility for the activities of the mass media and explicit responsibility on the part of the mass media for spreading or avoid spreading different kinds of information.

The protection of journalists is dealt with in Article IX of the final version of the Declaration where it is said that “the international community” should contribute to the creation of “/.../the conditions for the protection, in the exercise of their functions, of journalists and other agents of the mass media.” It is pointed out in Article IX that “Unesco is well placed to make a valuable contribution in this respect” (*inter alia*, the protection of journalists). The proponents of an international code of ethics and of solid protection of journalists, possibly combined with a licensing scheme, would have preferred a stronger obligation on the part of Unesco to work this out. In Article II para. 4 reference is also made to the protection of journalists in the sense that if the mass media shall be able to promote the principles contained in the Declaration it is essential that journalists, at home or abroad, “be assured of protection

<sup>40</sup> Ibid., p 19.

guaranteeing them the best conditions for the exercise of their protection.” In Article II para. 2 another aspect of the working conditions of journalists is dealt with. Here it is stated that journalists must have the “freedom to report (!) and the fullest possible facilities of *access to information* (emphasis added)”.

Some particularly interesting comments were made during the Nairobi debate concerning the purpose of the draft Declaration as a whole. The delegate of Nigeria for example “believed that at the present time a Declaration on the mass media was peripheral to the real and urgent needs of overall national development in most developing countries.”<sup>41</sup> The Norwegian delegate pointed out that “since the decision to prepare a Declaration had been taken in 1972 the situation had changed considerably and both within Unesco and elsewhere attention was now centred on the need and demand of the developing world for a just and equal participation in the global communication structure.”<sup>42</sup> These comments illustrate the fact that at the origins of the Mass Media Declaration lay the East–West conflict. The draft Declaration started out as an ideological instrument on the initiative of the Soviet bloc. More and more the practical communication needs of the Third World countries came into the picture, although many Third World countries through the Non-Aligned Movement at the same time kept a high ideological profile.

At the nineteenth session of the Unesco General Conference in Nairobi in 1976, furthermore, yet another draft proposal was prepared, this time by a Unesco official, Gunnar Garbo from Norway, for the Drafting and Negotiating Group of the nineteenth session.<sup>43</sup> From July to September 1977 a group of consultants was convened by Unesco to prepare a revised text of the declaration.<sup>44</sup> Then another proposal was

<sup>41</sup> Ibid., p 14. Also Australia, p 27, Italy, p 29, and Bolivia, pp 32–33, expressed the view that the draft Declaration was peripheral to the needs of the developing countries.

<sup>42</sup> Ibid., p 2.

<sup>43</sup> Unesco Gen. Conf., 19th Sess., 1976, Unesco Doc. No. 19C/INF.21, Draft Declaration of Fundamental Principles on the Role of the Mass Media in Strengthening Peace and International Understanding and in Combating War Propaganda, Racism and Apartheid, reproduced in Nordenstreng, op.cit. ch. 3.1.2 (n. 61), p 341.

<sup>44</sup> Unofficial Unesco document, September 1977: Draft Declaration on Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and in Combating War Propaganda, Racism and Apartheid, reproduced in Nordenstreng, 1984, *ibid.*, p 347.

prepared by consultants to Unesco in December the same year.<sup>45</sup> In the respective titles of these drafts the concepts of “role”, “use” and “contribution” of the mass media succeeded each other in the said order.

The draft of December 1977 was in its turn eventually followed, after “further broad consultations” in order to arrive at a text “which could meet with the largest possible measure of agreement”<sup>46</sup>, by a Draft Declaration on Fundamental Principles Governing the Contribution of the Mass Media to Strengthening Peace and International Understanding and to Combating War Propaganda, Racism and Apartheid,<sup>47</sup> drawn up by the Unesco Secretariat. This draft was eventually presented by the Director-General to the twentieth session of the Unesco General Conference in 1978.

After the Director-General had presented this draft Declaration to the twentieth session of the Unesco General Conference the Western nations, the Soviet bloc and the Non-Aligned Countries, respectively, worked out one alternative draft each containing amendments to the draft presented by M’Bow.<sup>48</sup> It was not until the Director-General at last succeeded in procuring yet another amended version of the Declaration that, to the surprise of most delegates, every member state could accept and which was subsequently adopted by acclamation.<sup>49</sup> M’Bow himself is generally regarded as having been personally, as well as professionally, deeply involved in the work on the Mass Media Declaration and on the NWICO project as a whole.

The final version of the title became, as we have seen, “Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War”. Thus the function of the mass media according to this version is to “contribute” to the enumerated purposes. This is a

<sup>45</sup> Unofficial Unesco document, December 1977: Draft Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding and to Combating War Propaganda, Racism and Apartheid. Reproduced in Nordenstreng, 1984, *ibid.*, p 360.

<sup>46</sup> Quoted by the Unesco Executive Board from Gen. Conf. res. 4.143, 19th Sess., 1976, in item 5.5.4 at its 104th session, Unesco Doc. No. 104 EX/28, 20 April 1978.

<sup>47</sup> Unesco Doc. No. 20C/20, reproduced in Unesco, *New communication order*, No. 9, p 115.

<sup>48</sup> Unesco Doc. Nos. 20C/PRG.IV/DR.7, 17 November 1978, 20C/PRG.IV/DR.8, 17 November 1978 and 20C/PRG.IV/DR.9, 20 November 1978, reproduced in Nordenstreng, *op.cit.* ch. 3.1.2 (n. 61), p 391, p 396 and p 399 respectively.

<sup>49</sup> Cf. above (n. 1).

considerably weaker linguistic expression than the previously mentioned "role" that the mass media was supposed to play according to some earlier drafts, or in particular, the "use" that was supposed to be made of the mass media according to others.<sup>50</sup>

It can be noted that "the Promotion of Human Rights" appeared, for the first time, in the title. This fact is reflected in the text of the Declaration of 1978 as well where, because of pressure exerted by the Western bloc, references to "human rights" and to "freedom of opinion, expression and information" are plentiful. The "combating" of racialism, apartheid and incitement to war was in the last minute changed into the weaker "countering".

The actual articles of the Mass Media Declaration are preceded by a comprehensive preamble which gave rise to almost as many problems as the articles themselves during the negotiations. The preamble lists several international instruments relevant to the function of the mass media including the Constitution of Unesco (Article I(1) and I(2)), the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights,<sup>51</sup> the International Convention on the Elimination of all Forms of Racial Discrimination, resolution 59(I) of the UN General Assembly of 1946 (which declares that freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the UN is consecrated), as well as, finally, several other declarations and resolutions adopted by Unesco and the UN General Assembly concerning the promotion of international understanding and

<sup>50</sup> In 1978 too a UN General Assembly Declaration on the Preparation of Societies for Life in Peace was adopted following a Polish initiative in which "the essential role of /.../ the mass media /.../ in promoting the ideals of peace and understanding among nations" is recognized in the preamble (res. 33/73, of 15 December 1978). Cf. Wiewiórska, op. cit. ch. 1.2.4 (n. 162), p 142. The concept of "use" of the mass media was to reappear in a draft declaration presented to the UN General Assembly in 1981. The Non-Aligned Countries had prepared a "Draft Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States", according to which the General Assembly would declare, in Article I (iii), "The right of States and peoples to have free access to information and to fully develop, without interference, their system of information and mass media and to use their information media in order to promote their political, social, economic and cultural interests and aspirations, based *inter alia* on the relevant articles of the Universal Declaration of Human Rights and the principles of the new international information order" (Doc. No. A/C.1/36/WG/CRP.1/Rev.1, 19 November 1981). The Draft Declaration was later withdrawn because of the strong Western resistance it met with.

<sup>51</sup> Both Articles 19 and 20 are mentioned explicitly although a number of Western states have made reservations in regard to Article 20 as a whole or to para. 1 which prohibits war propaganda. The Danish delegate pointed out during the debate following the adoption of the Mass Media Declaration that Denmark had made a reservation in regard to paragraph 1 of Article 20 (Unesco Gen. Conf., 20th Sess., 1978, Statements at the Twenty-Ninth and Thirtieth Meetings of Programme Commission IV, reproduced in Unesco, *New communication order* No. 9, pp 137-191, p 164).

friendly relations among states and the countering of war propaganda.

Interestingly, when the contents of Article 20 are spelt out in the preamble of the Mass Media Declaration, “propaganda for war” is changed into “incitement to war”. This is also the case in the very title of the Declaration. On the other hand, when it comes to advocacy of national, racial or religious hatred, it is not, at least not clearly, stated in the preamble that this particular advocacy has to *constitute incitement to* discrimination, hostility or violence in order to be punishable. So, whereas under the Covenant on Civil and Political Rights, the mere advocacy, or propaganda, for war shall be prohibited by law, the advocacy of national, racial or religious hatred in addition has to incite to discrimination, hostility or violence in order to be punishable. This has for some reason been reversed in the preamble of the Mass Media Declaration.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are also mentioned in Article XI of the Declaration. Righter calls the reference to the 1966 Covenant on Civil and Political Rights in Article XI the “Moscow clause” because in her view it was the only, though not insignificant, Soviet contribution to the final version of the Declaration.<sup>52</sup>

The reason why the Soviet Union pressed for the inclusion of a reference to the Covenant on Civil and Political Rights in the Mass Media Declaration, according to Righter, would have been that Article 20 of the Covenant, in particular, but also Article 19 para. 3, prescribes and allows, respectively, certain restrictions on the freedom of information. The Soviet Union, as we have seen, first in the post-War debates on freedom of information and later in the NWICO debates, consistently emphasized the fact that the exercise of freedom of information would have to be restricted in various ways.

On the other hand, in Article XI of the Mass Media Declaration, reference is made to “the provisions of the Universal Declaration of Human Rights and ... the corresponding principles proclaimed in the International Covenant on Civil and Political Rights”. The relevant provision in the Universal Declaration in this context is Article 19 on freedom of expression. This article does not mention anything about pos-

<sup>52</sup> Cf. Righter, “Who won?”, *Journal of Communication*, vol. 29, 1979, p 193. In ch. 1.3.2 we saw that the Soviet bloc sponsored Article 20 of the 1966 Covenant itself. Leonard R. Sussman, Freedom House, New York, told this author that in his opinion the Soviet influence on the Mass Media Declaration was largely blocked with the South-West compromise in 1976 (cf. above (n. 24)).

sible restrictions on the freedom of expression or information so the "corresponding principles" proclaimed in the Covenant on Civil and Political Rights would then rather be those contained in Article 19 paras. 1 and 2. If this interpretation of Article XI of the Mass Media Declaration is correct the potential restrictive impact of the "Moscow clause" in the Mass Media Declaration is weakened. In Article II para. 1, furthermore, it is stated, without any immediate qualifications, that "the exercise of freedom of opinion, expression and information" is a vital factor in the strengthening of peace and international understanding.

The large-scale negotiating and bargaining process which preceded the consensus around the Mass Media Declaration was ended by the Third World countries accepting a considerably milder, less ideologically coloured or less "politicized" version of the Declaration compared with earlier drafts, in exchange for promises of technical and economic aid from the Western world. Nordenstreng writes that already in Nairobi in 1976 Western diplomats had been busy suggesting various aid schemes to the developing countries.<sup>53</sup> The Western industrialized countries had come to an understanding that while they would not accept any restriction on their own communication systems and freedom of information, they would offer the developing countries extensive aid in developing their own communication systems, so as to be able to achieve a more balanced flow of news this way instead.<sup>54</sup>

The important aspiration of the developing countries to strengthen their own mass media and to establish regional news co-operation and exchange mechanisms in order to "correct the inequalities in the flow of information to and from developing countries, and between those countries" is dealt with in Article VI: "... it is essential that their mass media should have conditions and resources enabling them to gain strength and expand, and to co-operate both among themselves and with the mass media in developed countries."

Even more to the point concerning what needs to be done is Article X para. 3: "... it is necessary that States facilitate the procurement by the mass media in the developing countries of adequate conditions and

<sup>53</sup> Cf. Nordenstreng, "Behind the Semantics—A Strategic Design", *Journal of Communication*, 1979, p 196. Cf. above (n. 24).

<sup>54</sup> Cf. Berwanger, "From the Holy Alliance to the New Order: The History of a Concept", *Vierteljahresberichte. Probleme der Entwicklungsländer*, Nr. 85, 1981, p 239.

resources /.../” The “States” in question must reasonably be the developed, Western states. This has turned out to be the only truly, in a practical sense, “operative” article in the Mass Media Declaration, at least as far as “resources” are concerned. The “conditions” mentioned could also be construed as implying the political and legal conditions in the Third World countries themselves, conditions which can be more or less conducive to letting the mass media “gain strength and expand”.

It is in the political and legal sense, probably, that the word “conditions” in Article XI should be understood. According to Article XI it is necessary to guarantee the existence of “favourable conditions” for the operation of the mass media in conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Certainly, the ultimate goal, according to the Declaration, of helping the developing countries, is to strengthen peace and international understanding, to promote human rights and to counter racialism, apartheid and incitement to war. The second ultimate goal at least from the Third World countries’ point of view is to establish “balanced international information relations”. Gradually, however, a kind of common understanding has developed between many Third World countries and the Western world over the years that what matters most to the developing countries is in fact the immediate practical goals of national media development. It is this kind of understanding that the participants in the 1982 Prague symposium on a new international information order referred to when they said that the imperialist propaganda uses “the inconsistency and vacillation” of some Third World representatives in their approach to “a new international information order” in order to drive a wedge between the newly liberated and Socialist countries.<sup>55</sup>

Although formulated in little obligating or indirect terms, there still remain numerous guidelines for media content in the Mass Media Declaration. In Article III para. 2 it is said that “/.../ the mass media, by disseminating information on the aims, aspirations, cultures and needs of all peoples, *contribute to*” a large number of objectives, centered around drawing attention to “the great evils which afflict humanity, such as poverty, malnutrition and diseases”, and promoting “the reduction of international tension and the peaceful and equitable settlement

<sup>55</sup> Cf. *World Marxist Review*, supra ch. 2.1 (n. 60), p 43.

of international disputes (emphasis added).” Article III para. 1 states that “[t]he mass media have an important *contribution* to make to the strengthening of peace and international understanding and in countering racialism, apartheid and incitement to war (emphasis added).”

In Article II para. 3 it is stated that the mass media, “[w]ith a view to the strengthening of peace and international understanding, to promoting human rights and to countering racialism, apartheid and incitement to war, the mass media throughout the world, by reason of their role, *contribute to* promoting human rights, in particular by giving expression to oppressed peoples /.../ who are unable to make their voices heard within their own territories (emphasis added).”

The opening Article I also reiterates the title of the Declaration and says that “[t]he strengthening of peace and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information. To this end, the mass media have a leading *contribution* to make /.../ (emphasis added).” The article is concluded with a somewhat vague characterization of the intended contribution: “This contribution will be the more effective to the extent that the information reflects the different aspects of the subject dealt with.”

The conflicting conceptions of a “free” versus a “better balanced” dissemination of information are built into Article I, as well as into the entire Declaration. “Wider” is a compromise formula meaning greater representation of Third World voices in the international flow of news and information, but not implying regulation or control in the view of the Western countries.

The NIEO is referred to in Article VII, although this concept has been reformulated here into “a more just and equitable international economic order” (thus not even “new”). In the preamble of the Declaration reference is expressly made to “the declarations and resolutions adopted by the various organs of the UN concerning the establishment of a *new international economic order* and the role Unesco is called upon to play in this respect” (emphasis added).

Article VII simply states that “[b]y disseminating more widely all of the information concerning the universally accepted objectives and principles which are the bases of the resolutions adopted by the different organs of the United Nations, the mass media contribute effectively to the /.../ establishment of a more just and equitable international eco-

conomic order.” This constitutes a rather indirect appeal to the mass media but nevertheless constitutes some kind of standard for media content. In the Nairobi draft of 1976 the mass media in Article VII had “a duty to make widely known among the peoples of the world the objectives /.../ on which /.../ the foundations of a new international economic order are based.”

### **3.2.2 Comments on the substantive significance of the Declaration**

Although consensus was reached round the final formulation of the Mass Media Declaration, opinions differ considerably concerning the meaning and importance of the content of the Declaration. These differences occur not only among outside observers but also among the Member States of Unesco who nevertheless had all approved of the adoption of the Declaration. According to Gauhar, all the reservations of the different parties were adroitly incorporated into this document of consensus, while, in fact there was no agreement on any major issue.<sup>56</sup> Another observer agrees and writes that the Mass Media Declaration failed to settle the debate over the free flow of information and merely restated the issue.<sup>57</sup>

All three blocs party to the debate had reasons to be content with the Mass Media Declaration. The Western countries were on the whole satisfied with having succeeded, at least for the time being, in averting what they conceived as a direct threat to international freedom of information. They had all along struggled to make the wording of the Declaration as little a challenge to the existing international human rights law as possible. John F. Reinhardt, US Ambassador to the 1978 Unesco General Conference, said at a hearing concerning Unesco and the freedom of information organized by the US Congress in 1979, that the US negotiating strategy had been to de-emphasize normative prescriptions for information flow and to stress (infra)structural solutions for information imbalances thereby promoting improved equality through conditions of freedom.<sup>58</sup> This strategy turned out to be rather successful.

<sup>56</sup> Cf. Gauhar, op. cit. ch. 2.1 (n. 7), p 61.

<sup>57</sup> Cf. Bortnick, “International Information Flow: The Developing World Perspective”, *Cornell International Law Journal*, vol. 14, 1981, p 346. See also UNESCO’s Mass Media Declaration: A Forum of Three Worlds, *Journal of Communication*, 1979, pp 186–198.

<sup>58</sup> United States, 96th Congress, House of representatives, Committee on Foreign Affairs, Sub-

After the adoption of the Declaration in Commission IV all delegates, including the Western ones, expressed great relief that the difficult struggle to reach an agreement had finally been concluded. Some Western delegates, with the exception of the fully confident United States delegate, although they had been in favour of adoption of the Declaration, expressed concerns with parts of the text.<sup>59</sup> The Swiss delegate, for example, said that it was only after great hesitation that his delegation had decided to join the consensus. The Swiss delegate expressed "... le regret que le texte sur lequel nous avons été appelés à nous prononcer mêle à des aspirations parfaitement légitimes un postulat qui n'a nullement été justifié par l'expérience passée, celui selon lequel le contrôle de l'Etat sur les mass media est de nature à favoriser leur action en faveur de la paix et de la compréhension internationale."<sup>60</sup> This regret is representative of the scepticism of many Western countries towards the diluted but still present normative elements in the Declaration. At the same time the Swiss delegate expresses the general understanding of the Western world concerning the needs of the developing countries to develop their communications infrastructure.

The Dutch delegate makes a similar point when he critically analyzed the references in the preamble of the Mass Media Declaration to "the aspirations of the developing countries for the establishment of a new, more just and more effective world information and communication order": "If these aspirations are directed towards diminishing the disparities in mass media infrastructures between developed and developing countries, we are more than willing to accept this concept. But if, in the future, this concept of a new, more just and more effective world information and communication order is modified and eventually replaced by the concept of a *new international information order* (emphasized here), that would be a source of considerable concern for the Netherlands."<sup>61</sup>

The Dutch delegate continues: "Our reservation on the concept of a new international information order stems from the fact that the mean-

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committee on International Organizations, July 19, 1979, p 5.

<sup>59</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Statements at the Twenty-Ninth and Thirtieth Meetings of Programme Commission IV, reproduced in Unesco, *New Communication Order*, No. 9: Interventions made by the United States of America p 144; Switzerland p 147; Austria, p 155; Canada, p 155; and The Netherlands p 177.

<sup>60</sup> Ibid. Switzerland, p 147.

<sup>61</sup> Ibid. The Netherlands, p 177.

ing and implications of this concept have nowhere been clearly defined as yet. If this concept means that the legitimate interests of the developing countries are to be recognized, we want to co-operate fully, both bilaterally and multilaterally, as we have shown already by the offer of assistance we made in earlier discussions in this Commission. If, however, this Declaration is a first step towards restriction in the future of freedom of information, expression of opinion and fundamental human rights through governmental control on editorial content /.../ we shall not be willing to accept this. Both the Constitution of Unesco and the Constitution of my country would forbid us to do so.”<sup>62</sup>

At the beginning of his statement the Dutch delegate bluntly stated that with regard solely to its own interests, the Netherlands delegation “would never have felt the need for an international instrument of this kind”; “[i]n supporting the consensus /.../ the Netherlands delegation was exclusively concerned with the need to comply with the legitimate wishes of the developing countries.”<sup>63</sup> This defensive position had been the Western one all along, also in relation to the NWICO debate as a whole.

A couple of comments can be made regarding the doubts of the Dutch delegate. To begin with, not only the concept of “a new international information order” has not been clearly defined. The “meaning and implications” of the concept of “a new, more just and more effective world information and communication order” has not been clearly defined either. On the contrary, it has rather become more and more hazy.

The Dutch delegate, furthermore, expressed fears that the latter concept would be modified and replaced by the former. In fact, it was at the 1978 General Conference that the concept of “a new international information order” (which in reality has never been endorsed by Unesco) was definitively replaced by the less rigid concept of “a new, more just and more effective world information and communication order”. The Dutch fears of a reappearance of “a new international information order” have not come true. The new, more flexible formula was pinned down in the sixteenth preambular paragraph of the Mass Media Declaration itself as well as in two General Conference resolutions.<sup>64</sup> In

<sup>62</sup> Ibid.

<sup>63</sup> Ibid., pp 176–177.

<sup>64</sup> Unesco Gen. Conf. res. 4/9.1/2 and 4/9.1/3 respectively, 20th Sess., 1978.

the former of these two resolutions the word “effective” is for unknown reasons replaced by “balanced”, but presumably the intended meaning is the same. The new formula was supposed to denote an evolutionary rather than a revolutionary process. Another, rare variation of the concept is found in Article VI of the final Mass Media Declaration which talks about the establishment of “a new equilibrium and greater reciprocity in the flow of information”.

After the adoption of the Mass Media Declaration it has lain in the interest of Western observers to play down the potential revolutionary significance of the Declaration maintained by the other two opposing groups. Western observers accordingly interpret its contents in a manner supportive of the liberal values underlying the international human rights law in this field. And, as a matter of fact, the Declaration has been sprinkled with references to human rights and freedom of information. One Western observer said that “we started out with a rattlesnake of a declaration and ended up, after defanging it, with a garden snake”.<sup>65</sup> Another observer is of the opinion that the Declaration emphasizes human rights and repudiates the concept of state control of the media.<sup>66</sup> This in spite of the fact that initially the Western governments at Unesco expressed the opinion that even to negotiate on the functions of the press would be to accept the premise of state intervention in the content of news and the conduct of the media.<sup>67</sup>

The Soviet bloc and the Third World countries for their part considered the Mass Media Declaration a breakthrough for the concept of a NWICO and therefore greatly emphasized the importance of the Declaration. Already in 1976 the compassionate GDR delegate said that the then draft Declaration gave expression to the efforts of the Non-Aligned countries to establish “a new international information order.”<sup>68</sup> According to this view, the mere fact that it had been possible, in an official document, authorized by the UN system, to collect international rules focussing explicitly and solely on the mass media was significant, considering how controversial the issue of international regulation of

<sup>65</sup> Attwood, “The Politics of Information”, *Political Communication and Persuasion*, vol. 1, 1982, p 323. Cf. also Sussman and Sussman, op.cit. ch. 3.1.1 (n. 2), pp 344–360, passim.

<sup>66</sup> Cf. Righter, op. cit. (n. 52), p 192.

<sup>67</sup> Righter concedes that the Declaration did set a precedence for governments to pronounce on the function of the media (Righter, *ibid.*, p 193).

<sup>68</sup> Cf. Unesco Gen. Conf., 19th Sess., 1976, Plenary Proceedings, p 448. Cf. also Addis, op.cit. ch. 2.1 (n. 1), p 507; Shevtsova, op.cit. ch. 2.2 (n. 27), p 60; also Nordenstreng, op. cit. (n. 53), p 196.

the mass media had been—and would remain. The spokesmen of a NWICO had emphasized that “international mass media relations” just like any other international relations should be legally regulated. The preamble of the Mass Media Declaration was considered to be of particular importance in this respect in that it placed the mass media within a general framework of interstate relations and international law.

On the other hand, some proponents of a NWICO and of the Mass Media Declaration, when faced with Western criticism and fears of government control of the media play down the significance of the Declaration saying that in reality it does not constitute anything drastically new, but merely collects together and systematically presents existing norms of international law.<sup>69</sup>

Apart from the actual Declaration the Third World countries were contented with the fact that they were also promised extensive aid “behind the scenes”. For the Soviet bloc, in particular, it was important that the Declaration oriented the mass media to serving certain political causes (“contribute to”).<sup>70</sup>

Immediately after the adoption of the Mass Media Declaration the USSR delegate, Yuri Kashlev, stated in the following way what his delegation felt to be the major importance of the adoption of the Declaration: “First of all, for the first time in many decades—perhaps for the first time in history<sup>71</sup>—an authoritative international document has been adopted which proclaims that the mass media have a contribution to make to the cause of peace and international understanding, to the furtherance of human rights and to the combat against racialism, apartheid and warmongering.”<sup>72</sup>

Kashlev continues: “Secondly, we see the importance of the Declaration in the fact that it clearly confirms the necessity of combining the concept of freedom of information, which we all advocate, with the

<sup>69</sup> Cf. Addis, *ibid.*, p 507. That the Declaration systematically presents existing norms of international law is correct only in so far as the preamble of the Declaration is concerned, where certain conventions of relevance for freedom of information are enumerated, as are a number of important UN General Assembly and Unesco resolutions and declarations on this subject.

<sup>70</sup> Cf. *World Marxist Review*, *supra* ch. 2.1 (n. 60), p 42; Shevtsova, *op.cit.* ch. 2.2 (n. 27), pp 53–54.

<sup>71</sup> Here he overlooks the Convention concerning the Use of Broadcasting in the Cause of Peace, of 1936.

<sup>72</sup> Unesco Gen. Conf., 20th Sess., 1978, Statements at the Twenty-Ninth and Thirtieth Meetings of Programme Commission IV, reproduced in Unesco, *New communication order*, No. 9, Soviet statement, p 172.

concept of the responsibility of the mass media and journalists, responsibility which derives from the special nature of their activities and which has a strong influence on the international climate.”<sup>73</sup>

And further: “Thirdly, we see the importance of the Declaration in the fact that it calls unequivocally for the reorganization of international relations in the field of information—relations which were the outgrowth of colonialism and imperialism. It calls for the reorganization of those relations on the basis of present-day standards of equity, with due regard for the right of developing countries to have their own voice, to have their own mass media. This is an important step in the decolonizing of information, which the Soviet Union has always advocated both in word and deed.”<sup>74</sup>

We can see that the Soviet delegate emphasized the Soviet stakes in the debate leading up to the Declaration. This concerns especially the first and second points made by him. The first point stresses that the mass media should further certain political causes. Another supporter of the Mass Media Declaration, Nordenstreng, similarly to the Soviet delegate considers it important that the Declaration sets standards for media content.<sup>75</sup> Shevtsova for her part writes that “[t]he principle that the mass media must serve the cause of peace, mutual understanding, and mutual respect among peoples permeates all the articles of the declaration.”<sup>76</sup>

The second point made by the Soviet delegate is that the concept of freedom of information should necessarily be combined with the concept of responsibility of the mass media and journalists. The (former) Soviet Union as well as the Third World countries have been very anxious to build in reservations or qualifications of the freedom of information into the very concept of freedom of information.<sup>77</sup> Their goal may have been to eliminate, eventually, the liberal meaning of freedom of information altogether and to replace it with “responsibility” or

<sup>73</sup> Ibid. The assertion that all parties to the debate on the Mass Media Declaration advocated freedom of information is a qualified truth.

<sup>74</sup> Ibid. It is not clear what the Soviet delegate refers to when he says that the Soviet Union has always advocated the decolonizing of information both in word *and deed*.

<sup>75</sup> Cf. Nordenstreng, op.cit. ch. 3.1.2 (n. 61), p 138.

<sup>76</sup> Shevtsova, op. cit. ch. 2.2 (n. 27), p 54.

<sup>77</sup> In ch. 3.3.1.1 we will see how the issue of combining the actual concept of freedom of information with certain reservations was solved by Unesco at the end of the 1980s when it decided upon its Medium-Term Plan for 1990–1995.

“balance”, the result being that “freedom of information” would actually come to mean responsibility or a balanced flow of information.

China pointed out after the adoption of the Declaration that the expression “freedom of information” occurs quite a number of times, but that its meaning is not made sufficiently clear.<sup>78</sup> In China the citizen’s freedom of speech and the freedom of the press are upheld in the Constitution, according to the Chinese delegate. “But what we uphold is not sham but *genuine* freedom of the press, which conforms to the interests of the majority of nations and peoples in the world. We maintain that *freedom and equality are inseparable* (emphasized here).”<sup>79</sup>

The third point made by the Soviet delegate concerns the situation of the developing countries. Although the Western countries in principle understand and support the wish of the developing countries to build up their own communication capacity in order to make their voices heard internationally, a Western observer would probably not agree with the Soviet view that the Declaration “unequivocally” calls for the “reorganization of international relations in the field of information.” Not “unequivocally” because the protection of human rights implies certain limits and not “reorganization” because it implies that a “new order” should be established in international information relations and that is precisely what the Western countries have consistently opposed.

The Soviet delegate also commented upon the “moralizing about which countries enjoy a free press and those which do not” which had taken place after the adoption of the Declaration when the Western delegates expressed their fears concerning the text of the final version of the Declaration. The Soviet delegate sarcastically expressed his view of the Western kind of press freedom and stated that “[o]bviously, the majority of those present in this hall have a completely different concept of what constitutes freedom of information from, say, Lord Thomson, Mr. Hearst or Mr. Springer, etc. As regards that type of press freedom, the last word has been said by a famous French journalist /.../ who /.../ wrote that in the West every citizen has as much right to publish his own newspaper as to launch his own earth satellite.”<sup>80</sup>

<sup>78</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Statements at the Twenty-Ninth and Thirtieth Meetings of Programme Commission IV, reproduced in *New communication order* No. 9, Chinese statement, p 149.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid., Soviet statement, p 172.

The Canadian delegate for example had claimed that up until the last days before the adoption of the Declaration, during which the Declaration had undergone “a radical transformation”, the intention of those who introduced the Declaration project (i.e. the USSR) had been “... d’étendre au monde entier le régime auquel les médias sont assujettis à l’heure actuelle dans les Etats où le gouvernement se réserve le monopole de l’information.”<sup>81</sup> The paternalism and *dirigisme* contained in the earlier drafts had made them unacceptable to the Canadian delegation, the delegate said.

The Soviet delegate, finally, proud of the fact that the Mass Media Declaration had eventually been adopted, finished his statement on a somewhat accusatory and fateful note: “We know very well /.../ who suggested that this Declaration be drafted, we know who advocated its adoption, and we know who opposed it.”<sup>82</sup>

Shevtsova tries to “save” the lost Soviet demand for an article in the Declaration on state responsibility for the activities of the mass media by arguing, in a highly doubtful manner, that states are nonetheless responsible for the media.<sup>83</sup> She derives this responsibility from “the universally recognized imperative principles of nonintervention in the internal affairs of other states” and concludes that states have a duty to adopt the legislative measures needed to assure that the functioning of all the mass media is in strict accord with this principle. Violation of that principle by the mass media must be regarded as its violation by the state itself, Shevtsova claims, for the state is under obligation to cut short illegitimate activity on the part of all its mass media, regardless of to whom they belong.<sup>84</sup>

Shevtsova is right in that states may under certain circumstances be held internationally responsible for the activities of the mass media under its jurisdiction, both public and private.<sup>85</sup> It is theoretically possible to imagine situations where the activities of a mass medium would reach such a degree of intensity and aggressiveness that they would amount to an, illicit, intervention in the internal affairs of another state. Usually, though, activities of the mass media, however critical or neg-

<sup>81</sup> Ibid., Canadian statement, p 155.

<sup>82</sup> Ibid., Soviet statement, p 172.

<sup>83</sup> Shevtsova, op. cit. ch. 2.2 (n. 27), pp 58–60.

<sup>84</sup> Ibid.

<sup>85</sup> Cf. above p 180.

ative they may be in a particular case, are not regarded as intervention in the internal affairs of other states. Another situation which could lead to international state responsibility for the activities of the mass media would be if the media in a particular state started encouraging individuals to attack foreigners, and, in the case of private media, the state did not take measures to stop them.<sup>86</sup> It is a different matter if states in reality do not sometimes bring pressure to bear on the mass media—public as well as private—in order to stop them from irritating foreign governments even if the acts of the mass medium in a particular instance do not objectively constitute an intervention in the internal affairs of other states.

For the Third World countries also, the fact that the Mass Media Declaration had been adopted at all was a great source of pride. The fact that the Western countries during the course of the debates on the Mass Media Declaration came to accept that there are in fact imbalances in the international news flow, that the developing countries have the right to build up their own mass media and exchange news through national news agencies, and that the West can and should contribute to that effort, was a major indirect gain for the Third World countries.<sup>87</sup>

It was also a source of pride for the Director-General personally to have succeeded in making the Member States reach a consensus against all odds. In his comment to the adopted Mass Media Declaration, the Gabonese delegate stressed that it had been thanks to the actions of the Director-General above all that the Declaration had been adopted “in a universalist spirit”.<sup>88</sup> The fact that the then Director-General M’Bow himself comes from a developing country, “vaillant fils de l’Afrique” in the words of the Gabonese delegate, made the success of the Mass Media Declaration even more important and prestigious to the developing Member States of Unesco.<sup>89</sup> One of the reasons why the advocates of the draft Declaration did not insist on adoption of the draft by majority vote in Nairobi in 1976 was that they wanted to save the image of the Director-General who was anxious to reach a consensus adoption.

<sup>86</sup> Cf. Akehurst, *A Modern Introduction to International Law*, 6th ed., 1987, p 89; Brownlie, *op. cit.* (n. 8), pp 161–162.

<sup>87</sup> Cf. Righter, *op. cit.* (n. 52), p 194.

<sup>88</sup> Unesco Gen. Conf., 20th Sess., 1978, Statements at the Twenty-Ninth and Thirtieth Meetings of Programme Commission IV, reproduced in Unesco, *New communication order* No. 9, Gabonese statement, p 154.

<sup>89</sup> *Ibid.*

Some observers also contend that the fact that the 1976 General Conference took place on African ground was of a certain significance.

The fact that the General Conference took place in Africa is supposed to have added to the will to co-operate of the Third World delegations, especially the African ones, who also wanted to "save the image" of Africa. Also, the advocates of the draft Declaration may have been afraid that Unesco would simply fall apart if they forced through the adoption of such a controversial instrument as the draft Declaration as it then stood.<sup>90</sup>

While pointing out that the adoption of the Mass Media Declaration constituted a major step forward in the establishment of a NWICO, some Third World delegates regretted that the responsibilities and duties of journalists and the media were not more explicitly set out in the Declaration. The Indonesian delegate said that his delegation regretted and considered it as very unfortunate that the concept of "a new international information order" had been "very much watered down" in the final version of the Declaration.<sup>91</sup> The Indonesian comment also shows that despite the different origins of the Mass Media Declaration and the concept of a NWICO, the Declaration and the idea of a NWICO in time became closely connected.

The shift of emphasis away from ideological matters which has taken place since the adoption of the Mass Media Declaration, and which is to some extent mirrored in the Declaration itself, has also meant that the importance of the Declaration itself has diminished gradually. The more radical among the Third World countries who, even before the adoption of the Mass Media Declaration, felt that they were being outmanoeuvred by the Western countries in Unesco, made sure that the NWICO issue would survive in its more ideological form by also placing the issue on the agenda of the UN General Assembly.<sup>92</sup>

At the first General Conference following the adoption of the Declaration, in 1980, the effective implementation of the Declaration was being expected by its supporters.<sup>93</sup> A resolution was even adopted spelling out measures to be undertaken concerning the application of

<sup>90</sup> Leonard R. Sussman, Freedom House, New York, who was a member of the US delegation to Nairobi, told this author that this was his impression.

<sup>91</sup> Unesco Gen. Conf., 20th Sess., 1978, Statements at the Twenty-Ninth and Thirtieth Meetings of Programme Commission IV, reproduced in Unesco, *New communication order* No. 9, p 176.

<sup>92</sup> See further ch. 3.3.2.

<sup>93</sup> Cf. Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, pp 188-189.

the Declaration.<sup>94</sup> In 1983 and 1985 some delegates expressed regrets that apparently nothing or at least not enough was being done by Unesco to implement the Declaration.<sup>95</sup> Nevertheless, in 1985 the Director-General was invited “to *continue* (emphasized here) activities relating to the effect of the Declaration /.../”<sup>96</sup> In 1987 a number of speakers at the Unesco General Conference still observed that the Mass Media Declaration remained a significant document and that follow-up activities focused on its implementation should be pursued.<sup>97</sup>

Judging from later General Conference records, the issue of the implementation of the Mass Media Declaration has subsequently disappeared from the Unesco debates. Apart from the fact that a declaration on the activities of the mass media was adopted on the whole—“watered down” but nevertheless—the question is legitimate whether the Mass Media Declaration in any other way has had any significance whatsoever either for the subsequent NWICO policy debate or, in particular, for any of the practical measures undertaken after its adoption. It does seem as if this has not been the case. This impression is confirmed, furthermore, by the subsequent calls that have been made in the UN Committee on Information for the establishment of international legal norms and principles on the activities of the mass media for the promotion of peace and international understanding.<sup>98</sup> This is presumably what the Mass Media Declaration already did, at least according to its supporters.

The former Director-General of Unesco Amadou Mahtar M'Bow remained hopeful in his time, however, both concerning the impact of the Mass Media Declaration itself and more generally concerning the future development of a NWICO, partly expressed through the Declaration. In 1984 in a lecture given at the Institute of International Affairs in Lagos, Nigeria, M'Bow maintained that although the advent of a NWICO is an evolving process “and still too slow”, it is becoming a

<sup>94</sup> Cf. Unesco Gen. Conf. res. 4/20, 21st Sess., 1980.

<sup>95</sup> Cf. Unesco Gen. Conf., 22nd Sess., 1983, Report of Commission IV, pp 140–141; 23rd Sess., 1985, Report of Commission IV, p 196.

<sup>96</sup> Cf. Unesco Gen. Conf. res. 3.1 operative para. 5 (b) (ii), 23rd Sess., 1985.

<sup>97</sup> Cf. Unesco Gen. Conf., 24th Sess., 1987, Report of Commission IV, p 153.

<sup>98</sup> Cf. UN, GAOR, 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 13; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 13.

reality and the process can no longer be reversed.<sup>99</sup> “The process is irreversible”, according to M’Bow, “firstly, because the current technological revolution with all the innovations it is bringing into our daily lives /.../ foreshadows an unprecedented upheaval in the way we think and act which calls for a complete reappraisal of our view of man’s future.”<sup>100</sup> The second reason why the evolving process toward a NWICO is irreversible is that in order to escape “the dangers of leveling, uniformity and cultural assimilation” brought by the revolution in communications technology, the peoples of all parts of the world “want to assert their national and cultural identities, their collective and individual personalities.”<sup>101</sup> Unesco will respond to “these noble and multiple aspirations”, M’Bow assured, “by achieving broad consensus among its different Member States”.<sup>102</sup>

### **3.2.3 Formal significance of the Mass Media Declaration**

According to the Constitution of Unesco, recommendations and conventions are the only two so called standard-setting instruments at Unesco’s disposal.<sup>103</sup> Particular formal procedures are followed for the preparation and subsequent implementation of recommendations and conventions.<sup>104</sup> The recommendations are not binding for the Member States whereas the conventions are, if they are ratified. Member States have to report to Unesco on national action taken on the conventions and recommendations. Declarations were not foreseen at the time of the creation of Unesco as standard-setting instruments, but in the course of time the General Conference has adopted a number of declarations and they have been included among the standard-setting instruments.

No particular procedure has to be followed before the adoption of a Declaration. Nor is the implementation of Declarations within the Member States supervised. In introducing the draft Mass Media Declaration on the agenda of Unesco in 1972, one of the sponsors made it

<sup>99</sup> Unesco Doc. No. DG/84/5, Lecture by Amadou-Mahtar M’Bow on Unesco’s role in the establishment of a new world information and communication order, Institute of International Affairs, Lagos, January 1984, p 5.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid., pp 5–6.

<sup>102</sup> Ibid., pp 6.

<sup>103</sup> Article IV.B.4.

<sup>104</sup> Article VIII.

clear that what was intended was a “declaration” rather than a “recommendation” within the terms of the Rules of Procedure and Article IV of the Constitution.<sup>105</sup>

The Unesco publication “Unesco Standard-Setting Instruments”, discussing the origin of declarations as a particular kind of international normative instrument, says that declarations “[l]ike recommendations ... set forth universal principles to which the community of States wished to attribute the greatest possible authority and to afford the broadest possible support.”<sup>106</sup> As an example of a declaration is mentioned the venerable Universal Declaration of Human Rights. The UN Legal Adviser in 1962 is quoted regarding the intended legal significance of declarations: “/.../ in United Nations practice, a ‘declaration’ is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where maximum compliance is expected.”<sup>107</sup> Much the same practice is followed by Unesco as stated in Unesco Standard-Setting Instruments.

Then follows a comparison of the different roles of declarations, recommendations and conventions: “... in the drafting, adoption and implementation of Unesco declarations, no rule of procedure similar to the Rules of Procedure concerning Recommendations to Member States and International Conventions is followed: unlike the latter, declarations are adopted by an ordinary resolution of the General Conference. Nevertheless, it should not be deduced from the foregoing that *any one of these various instruments is superior to the others* (emphasis added). It is simply that their functions are essentially different; moreover, in the case of declarations, stress is laid on moral authority.”<sup>108</sup> In relation to the moral weight of declarations, the American delegate to the 1976 Unesco General Conference was right about the legal effects *per se* when he said that to accept the draft Mass Media Declaration would be to place the *moral sanction* on the side of controlled media.<sup>109</sup> (His opponents would say on the side of free media.)

<sup>105</sup> Cf. Unesco Gen. Conf., 18th Sess., 1972, Report of Commission IV, p 122. In 1976, the Director-General pointed this out twice during the debate; cf. Unesco Gen. Conf., 19th Sess., 1976, Plenary Proceedings, pp 447, 456.

<sup>106</sup> *Unesco Standard-Setting Instruments*, Unesco, Paris, 1986, pp XIII–XIV.

<sup>107</sup> Report of the Commission on Human Rights, 18th Sess., 19 March – 14 April 1962, ESCOR, Doc. No. E/3616/Rev. I, para. 105.

<sup>108</sup> *Unesco Standard-Setting Instruments*, p XIV.

<sup>109</sup> Cf. Unesco, Summary of Interventions, 1976, p 6.

In contrast to what is stated in Unesco Standard-Setting Instruments, conventions, surely, at least if they are ratified, are superior both to recommendations and declarations from a legal point of view. It is difficult to understand why the opposite is claimed in Unesco Standard-Setting Instruments; maybe "superior" is understood here in a more general sense. The hierarchy between recommendations and declarations is perhaps less clear. On the one hand, declarations carry more moral weight than recommendations but, on the other hand, there exists a mechanism for the implementation of recommendations in the Member States and the fact that Member States are obliged (a) to submit recommendations to the competent authorities (Article IV.B.IV), and (b) to report on the action taken upon recommendations (Article VIII) may contribute to the significance of recommendations as compared to declarations.

From a theoretical legal point of view, declarations are often considered to be somewhat more compelling than recommendations or ordinary resolutions. The most important characteristic of all these instruments, however, is that none is legally binding.<sup>110</sup> Here it is legitimate to speak less of superiority and more of "essentially different functions". During one of the debates on the Mass Media Declaration, the Director-General stated that a declaration has "un caractère incontestablement éthique."<sup>111</sup>

The former UN Secretary-General Javier Pérez de Cuéllar spoke of the significance of the Mass Media Declaration at the opening meeting of the substantive session of the UN Committee on Information in 1982. The Secretary-General emphasized that the Declaration, "though a formal and solemn instrument," was not in any way binding upon States nor upon the media.<sup>112</sup> Its articles are nothing but advisory. The use of such a document as the Mass Media Declaration, the Secretary-General continues, "lies in stating a generally acceptable approach on a matter of critical importance to the international community."<sup>113</sup> It may be added that what seemed to be of critical importance to Unesco at the time of the adoption of the Mass Media Declaration, was less the sub-

<sup>110</sup> There do exist a few authors, however, who consider resolutions emanating from international organizations to be legally binding.

<sup>111</sup> Unesco Gen. Conf., 19th Sess., 1976, Plenary Proceedings, p 456.

<sup>112</sup> Cf. UN, GAOR, 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 32.

<sup>113</sup> *Ibid.*

ject matter itself and more the ending of a fruitless ideological debate, in order for the organization and its Member States to be able to use money and energy for more constructive purposes. The Secretary-General further states, somewhat enigmatically, that the references to the human rights instruments in the preamble of the Declaration point to "the legal obligations of States to assist the mass media to implement its moral and professional obligations."<sup>114</sup>

It could perhaps be argued that there is a difference between the legal significance of declarations adopted by the UN General Assembly and those adopted by the Unesco General Conference. Either one could argue that those originating from the UN General Assembly carry more weight since the General Assembly is the highest political agency within the UN system, or one could argue that declarations originating from the Unesco General Conference carry more weight since Unesco is a specialized organ with a specific field of competence within which the organization is supposed to act, as opposed to giving general political guidelines like the UN General Assembly. Since Unesco is a specialized organ it can make its declarations somewhat more specific and concrete than is the case with the UN General Assembly (although a characteristic of declarations is that they should not be very detailed) and for this reason Unesco declarations may be easier to follow for the Member States. Thereby Unesco declarations may in practice gain greater importance than the more lofty Declarations of the UN General Assembly. No such argument will be made here, however. Unesco declarations are assumed to be equal to UN General Assembly Declarations.

The Mass Media Declaration obviously belongs to the category of international instruments called "soft law". A non-binding instrument, in principle, can express binding international customary rules and constitute evidence of their existence. The only rule of customary law which can be gathered from the Declaration is the prohibition of propaganda for war of aggression (although "propaganda" has been exchanged for "incitement" in the Mass Media Declaration). The other binding rules finding an expression in the Mass Media Declaration are the conventional human rights rules and prohibitions of racial discrimination and apartheid.

<sup>114</sup> Ibid.

The Mass Media Declaration could, theoretically, give rise to the necessary practice and conviction (*opinio juris*) on the part of the Member States in order for all or at least more of its contents than the prohibition of propaganda for aggressive war to become international customary law after some time. However, this is not very likely. This depends partly on the watered down and inconsistent content of the Declaration, which makes it difficult to implement the Declaration on the whole.<sup>115</sup> It is also partly dependent on the fact that neither the principle of freedom of information, nor content control in order to make the mass media contribute to peace and international understanding, nor economic and technical assistance to developing countries, will probably give rise to a practice and *opinio juris* widespread enough among the nations of the world to make the rise of an international customary rule in any of these cases possible. At least not in the latter two cases. It should be added that the human right to freedom of information already constitutes binding treaty law in relation to those countries who have ratified the relevant treaties. The Universal Declaration of Human Rights according to many observers has, partly, developed into binding customary law, but this is generally not considered to be the case with Article 19.

“Soft law” can signify that a particular instrument is “soft” in form, i.e. non-binding, like in the case of the Mass Media Declaration. “Soft law” can also signify that an instrument is “soft” in contents, something which also applies to the Mass Media Declaration. “Hard” instruments in form can be “hard” or “soft”, or both, in contents while “soft” instruments are usually “soft” also in contents although “hard” contents do also occur in “soft” instruments.<sup>116</sup> “Hard” content in this context

<sup>115</sup> It lacks the necessary “fundamentally normcreating character”; cf. North Sea Continental Shelf cases, *ICJ Reports* 1969, pp 41–42, para. 72.

<sup>116</sup> Cf. Sztucki, “Reflections on International ‘Soft Law’”, in *Festschrift till Lars Hjermer. Studies in International Law*, 1990, pp 551–556. On the large subject of the legal significance of resolutions and declarations, and of “soft law”, see also: Arangio-Ruiz, *The United Nations Declaration on Friendly Relations and the System of the Sources of International Law*, 1979; Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations*, 1966; Chinkin, “The Challenge of Soft Law: Development and Change in International Law”, *ICLQ*, vol. 38, 1989, pp 850–866; Higgins, *The Development of International Law through the Political Organs of the United Nations*, 1963; South West Africa cases, second phase, *ICJ Reports*, 1966; Case concerning Military and Paramilitary Activities in and against Nicaragua (merits), *ICJ Reports*, 1986; Lador-Lederer, “Legal Aspects of Declarations”, *Israel Law Review*, vol. 2, 1977, pp 202–231; di Qual, *Les Effets des Résolutions des Nations Unies*, 1967; Schreuer, “Recommendations and the Traditional Sources of International Law”, *German Yearbook of International Law*, vol. 20, 1977, pp 103–118; Skubiszewski, “Non-Binding Resolutions and the Law-Making Process”, *Polish*

means stipulations formulated in such a precise language that it is possible to apply or implement them directly.

The case of the Mass Media Declaration illustrates several trends that have contributed to the creation of a large number of "soft law" instruments, in both senses, in the international community of today. "Soft law" is a recent phenomenon both in practice and theory. The term became widely used in the 1970s. Increasing international co-operation is one important factor which has contributed both to the growth of internationally adopted instruments on the whole, and among them also of many "soft" instruments. The creation of international organizations is both a result of the wish for growing international co-operation in different fields and a prerequisite for the realization of international co-operation. As a consequence, it is primarily the documents emanating from international organizations which are subject to analyses from a "soft law" perspective because that is where most such recommendatory documents are adopted. The increasing overall international co-operation most often institutionalized through the creation of international organizations, thus, is one important factor behind the increasing number of "soft law" instruments during the post-War era, the Mass Media Declaration being one of them.

In the case of Unesco, the lumping together of conventions, recommendations and declarations under the common title of "Standard-Setting Instruments" has, according to some authors, contributed to a general blurring of the differences in legal significance between binding and non-binding instruments which is conducive to the growth of the "soft law" body (in the formal sense of the term).<sup>117</sup> The same applies to the "International Labour Standards" of the International Labour Organization (ILO). Considering the claim in "Unesco Standard-Setting Instruments" referred to above that no instrument is superior to any other, it could even seem as if the blurring is intentional.

Two other factors have also significantly contributed to the growth of the body of "soft law", in both senses. These two factors, which are closely related, are the arrival of the independent Third World countries on the international scene and the development of the tradition to adopt

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*Yearbook of International Law*, vol. XV, 1986, pp 135–161; Weil, "Vers une normativité relative en droit international?", *RGDIP*, vol. 86, 1982, pp 5–47.

<sup>117</sup> Cf. Sztucki, 1990, *ibid.*, p 575 n. 72. The much debated advantages or disadvantages of "soft law" and the relativization of international legal normativity will not be dealt with here.

decisions within international organizations by consensus. These factors have affected both the growing number of adopted "soft law" instruments in the formal sense and the "soft" content of many instruments. The many Third World countries have wanted many instruments to be adopted and these have mostly become "soft" in form, and the consensus tradition has in many instances made the contents of the adopted instruments imprecise and watered down. There has been a tendency within the Third World bloc to see international law, "hard" or "soft", as an instrument of change in international relations. And since the developing countries have wanted to achieve numerous changes they have wanted as many international instruments as possible, of any legal force, to be adopted. A growing irritation on the part of the Western Member States regarding the large number of standard-setting instruments, and other kinds of normative instruments, adopted by Unesco has led to the installation of stricter procedures for the introduction of such projects on the Unesco agenda.<sup>118</sup>

The Mass Media Declaration is illustrative of the general trend to press for the adoption of normative instruments, although, as we have seen, it was not only the Third World countries who pressed for the adoption of this Declaration. The Third World countries of course make up the majority of the Member States of the universal international organizations and in those cases where the votes are not weighted these countries can easily force through their will through majority votes. They are aware, however, of their need for economic assistance from the Western world for the realization of any decisions adopted, a fact which in many cases leads to a consensus decision where all opinions have been brought together since the Third World does not want to alienate the Western countries. This generally leads to a "soft" content of the instruments adopted. The Mass Media Declaration is a good, although extreme, example of this. Sometimes consensus is not enough to appease the Western world, however; the withdrawal from Unesco of both the US and the UK is an illustration of this although the Mass Media Declaration alone was not decisive.<sup>119</sup>

Withdrawal from international organizations has not been widely practiced, luckily, as a method of protest or pressure. In the long run even the Western countries most probably benefit from global interna-

<sup>118</sup> Cf. Unesco Gen. Conf. res. 32.1, 20th Session, 1978.

<sup>119</sup> Cf. Coate, *op.cit.* ch. 3.1 (n. 2).

tional co-operation. The bringing together of opinions has also concerned the Western and Eastern opinions in addition to the Western and Third World ones, although in recent years the former operation has become considerably easier. In the case of the Mass Media Declaration we could see that there were three clearly different opinion packages which were brought together. Of course, all co-operation implies making compromises to a certain extent.

The effect of "soft" non-binding instruments is not only decided by their form. A formally non-binding instrument may be more effective, in reality, than its form would seem to imply if its contents happen to appeal to the states concerned and to be in line with their interests. A formally binding instrument, on the other hand, may for similar reasons of content be either effective or ineffective depending on the will of the parties. This becomes especially true when no effective enforcement mechanisms exist which is most often the case in international law.

The significance of different international legal instruments, if significance is taken to mean also the empirical significance, is thus affected both by the form of the instrument in question and by the subsequent behaviour of the states concerned. The legal and political aspects are in this way intertwined and affect each other. Very substantial political significance entailing a wide compliance with a non-binding instrument may even in the long run lead to the creation of "hard" customary law.

From another point of view, although an instrument may be formally non-binding and States in theory may disregard it completely, they may not want to go along with any contents whatsoever, since if they do their acquiescence may be used against them on a later occasion. The long discussions and the many reformulations preceding the adoption of the Mass Media Declaration are illustrative of the reluctance on the part of a group of countries to accept a text the content of which they did not like, even though from a formal legal point of view they could have ignored the Declaration completely, irrespective of what it said. This points to a certain politico-legal significance even of resolutions and declarations. On the whole, because of their amorphous nature, the significance of any one resolution or declaration is best appreciated *in casu*, without recourse to generalizations.

Theoretically the non-binding Mass Media Declaration could become more significant by the compliance on the part of the Member States

with some or all of its contents. However, since the Mass Media Declaration has been largely ignored, its contents have not made it more significant than what follows from its form, indeed rather less. The fact that declarations in principle are supposed to carry more moral weight than recommendations and ordinary resolutions has not benefitted the Mass Media Declaration. Considering its watered down contents, the Mass Media Declaration would not have benefitted much from being a formally binding convention either.

### 3.3 Subsequent developments

#### 3.3.1 Unesco

##### *3.3.1.1 Evolution of the concept*

After the adoption of the Mass Media Declaration in 1978 the debate concerning a NWICO has continued into and during the 1980s although in the course of time the approach of Unesco has changed considerably. The official views brought forward concerning the content of the desired end, i.e. a NWICO, and the desirability of this end on the whole, have changed, gradually, and the views on the means to reach the desired end have been transformed. All in accordance with the general shift in the international climate away from explicit ideology and grand *dirigiste* schemes, intended to change all at once the state of the world, and towards pragmatism and incrementalism instead. This new “political realism” also spills over into the international legal field. In the case of Unesco this pragmatic shift was well summarized by the Acting Assistant Director-General for Communication in 1985 who, summing up the debate in Programme Commission IV, observed that there was now universal recognition of the priority to be given to operational activities, as opposed to theoretical and conceptual; “[t]he time for discussions on major principles /.../ was passing, giving way to the period of practical action, and efforts were currently being made to secure greater consistency between what was said and what was done.”<sup>1</sup>

The most important event in the normative work towards a NWICO

<sup>1</sup> Unesco Gen. Conf., 23rd Sess., 1985, Report of Commission IV, p 201.

taking place after the adoption of the Mass Media Declaration in 1978 was the adoption of resolution 4/19, also by consensus, in 1980.<sup>2</sup> According to the heading of the resolution it deals with the “International Commission for the Study of Communication Problems”, expressing the appreciation of the General Conference of the MacBride Commission’s work, as it were, but abstaining from endorsing the Commission’s numerous (82) recommendations. The Belgrade General Conference and its debate on the NWICO issue aroused much interest and attention among various observers. The manner in which the NWICO issue has been dealt with by Unesco at subsequent General Conference sessions has never since provoked such strong reactions, within or outside the organization. The Belgrade General Conference was decisive for the development of the NWICO issue in several respects as we will see in this chapter.

Resolution 4/19 marks an essential step in the formulation of the content of the desired NWICO. Resolution 4/19 is the only document where a comprehensive statement has been made on the part of Unesco explicitly enumerating the principal components of a NWICO. The Mass Media Declaration, although by many countries considered to be a major step on the road to a NWICO, does not constitute such an explicit description of the contents of a NWICO as resolution 4/19. The Mass Media Declaration says that the Member States should encourage a “wider and better balanced dissemination of information”, a “new equilibrium and greater reciprocity” and a “free flow and wider and better blanced dissemination of information” but does not spell out what this intended new state of affairs consists of.

Still, the formulations found in resolution 4/19 have proved to be so vague that the resolution, and more particularly part VI which deals with the content of a NWICO, could be applied even considering the aforementioned shift “from ideology to pragmatism”, which concerns primarily the ways in which to realize a NWICO (to the extent it is still desired). This vagueness thus has the advantage of not making the content of the resolution obsolete but flexible and possible to be adapted to shifting international political and legal trends. The disadvantage of such vagueness, obviously, is that the resulting text does not really amount to a clearcut definition.

<sup>2</sup> Unesco Gen. Conf. res. 4/19, 21st Sess., 1980.

The Unesco General Conference in Belgrade in 1980 also adopted another important resolution concerning the future implementation of a NWICO—resolution 4/21 establishing the International Programme for the Development of Communication (IPDC).<sup>3</sup> This resolution was decisive both indirectly, for the future policy and, directly, for the kind of practical work aiming at realizing a NWICO that was going to take place henceforward. In fact, resolution 4/21 heralds the end of one line of thinking within Unesco concerning a NWICO and the beginning of another official line which has remained the predominant and finally the only one. While resolution 4/21 gives expression to the new pragmatism, resolution 4/19 in comparison expresses the remaining radicalism. Between resolutions 4/19 and 4/21 there is also resolution 4/20, of less general importance, concerning the application of the Mass Media Declaration.

Those delegates who favour a NWICO have during the 1980s voiced regrets that Unesco has stopped carrying out studies on the concept and what it implies.<sup>4</sup> Since Unesco up until and including the General Conference in 1987 still officially professed to be working with the implementation of a NWICO in one way or the other, one delegate to the 1985 General Conference asked a relevant question when he wondered how Unesco could “fulfil the task which it is mandated to undertake [namely to promote a NWICO] if it proposed to conduct that process without a concept.”<sup>5</sup> The opponents of a NWICO also opposed further conceptual studies partly for economic reasons and partly because they perceived a NWICO as a threat to the freedom of expression.<sup>6</sup> Their opposition was commented upon by another delegate who said that “[i]t seemed paradoxical /.../ that the very countries that did not wish to continue exploring the basis for a new order had assigned to Unesco the important task of carrying out activities [i.e. through the IPDC] aimed, in fact, at creating the structures to bring about that new order.”<sup>7</sup> The explanation to this seemingly paradoxical situation is that Unesco had to balance the contradictory demands of primarily the Non-Aligned Members and the Western Member States. Also, since the

<sup>3</sup> Unesco Gen. Conf. res. 4/21, 21st Sess., 1980.

<sup>4</sup> Cf. for instance Unesco Gen. Conf., 23rd Sess., 1985, Report of Commission IV, pp 190, 193.

<sup>5</sup> *Ibid.*, p 190. Concerning the 1989 General Conference see further below.

<sup>6</sup> *Ibid.*, p 193.

<sup>7</sup> *Ibid.*, p 193.

Western states in reality probably do not see the IPDC primarily as a means to bring about a NWICO, they are not acting in a way as self-contradictory as it may appear.

Resolution 4/19 part VI, to start with, in operative paragraph 14 (a), sets out what “considerations”, among others, that the General Conference of Unesco thinks that “‘a new world information and communication order’ ‘could’ be based /.../ on.” The language is very careful to the extent that it is said that a NWICO *could* be based on these *among other considerations*. On the other hand the resolution uses the concept “a new world information and communication order” without any of the softening qualifications usually used—like “more just and more effective” or “wider and better balanced”—a fact which must be considered a victory for the advocates of a NWICO.

An important feature of resolution 4/19 within the context of the standard-setting activities of Unesco is that it is a resolution. Resolutions do not constitute standard-setting instruments whereas, for example, declarations do. In reality, however, resolution 4/19 has gained relatively greater weight than the Mass Media Declaration. This was probably unintentional on the part of Unesco and may depend on the fact that resolution 4/19, although vague, is still, under the circumstances, somewhat more clear and direct than the Mass Media Declaration.

The eleven considerations on which a NWICO “could be based” can be interpreted in many different ways. From the practical/pragmatic viewpoint, which today has become generally accepted within Unesco, it is possible to construe resolution 4/19 part VI in a “Western” way, i.e. in a way which does not challenge the liberal conception of freedom of information and the press. The West does not for example oppose the “elimination of the imbalances and inequalitites which characterize the present situation” according to paragraph 14 (a) item (i) as long as the elimination is gradual—an “evolving and continuous process” as it has been expressed somewhat enigmatically in a Unesco General Conference resolution of 1983<sup>8</sup>—and aimed at finding technical solutions to the communication problems of the developing countries.

The West, furthermore, has nothing in particular against the “elimination of the negative effects of certain monopolies, public or

<sup>8</sup> Unesco Gen. Conf. res. 3.1, operative para. 8.(d), 22nd Sess., 1983.

private, and excessive concentrations in the mass media field” (item (ii)). Those who have fought hardest in Unesco against the alleged concentrations are the advocates of a NWICO and, among these, in particular the formerly Socialist states. However, excessive concentration in the mass media field has more and more come to be regarded as a problem also among the Western countries.<sup>9</sup> The Socialist states have obviously not fought against concentrations as far as state ownership is concerned—only against concentrations in the private sphere in other countries and on the international scene. The addition of “public” monopolies was a concession to the Western standpoint.

Nor do the Western nations object to the “removal of the internal and external obstacles to a free flow /.../ of information and ideas” (item (iii)). They may still, however, object to the middle part of the paragraph commending also the removal of the obstacles to a “wider and better balanced dissemination” of the information and ideas in question because of the Western dislike of the term “balanced” in this context, which was one of the original claims of the Non-Aligned NWICO advocates. “Wider”, however, is not a controversial term from the Western point of view. Moreover the “plurality of sources and channels of information” (item (iv)); the “freedom of the press and information” (item (v)); and “the freedom of journalists and all professionals in the communication media” (item (vi)) is probably fully acceptable to the West.

As regards the latter paragraph it also states that the freedom of journalists and media professionals is “a freedom inseparable from responsibility”, the original concept being the so called social responsibility deemed very important by Socialist and Third World countries and being a result of these countries’ particular conception of the role of the mass media in society. Taken in a wide and general sense, however, the anticipated responsibility need not amount to any restrictions on the functions of journalists or other communication media professionals that the West cannot accept. What the West cannot accept is that the journalists are made responsible for creating a peaceful international climate and friendly relations between states or that the journalists are forced to be so “responsible” that they do not dare criticize the powers that be within their own or within foreign countries.

Although the conception of social responsibility is foreign to the

<sup>9</sup> Cf. ch. 1.2.3 pp 62–69.

traditional liberal conception of the role of mass media in society it can nevertheless be assumed that a certain amount of responsibility on the part of journalists is reckoned with even in the most liberal Western countries today. Siebert et al. wrote already in 1956 that the social responsibility theory best explains the function of the media in Western democracies.<sup>10</sup> This is presumably why they have been able to accept the concluding reservation in item (vi). Also the emphasis put on “freedom” at the beginning of item (vi) may have helped.

“The capacity of developing countries to achieve improvement of their own situations, notably by providing their own equipment, by training their personnel, by improving their infrastructures and by making their information and communication media suitable to their needs and aspirations” (para. (vii)) is a consideration (on which a NWICO could be based) that could not reasonably cause any protest among the Western countries. If this paragraph was carried one step further, namely if it stated that money should be transferred in one way or another to the developing countries or that a NIEO should be established in order for the developing countries to be able economically to “provide their own equipment”, then the paragraph could have been controversial. In the next para. (viii) “the sincere *will* (emphasized here) of developed countries to help them attain these objectives” is stated. The formulation of para. (viii) is not very obliging.

The will to help is nevertheless manifested in resolution 4/21 on the establishment of an International Programme for the Development of Communication (IPDC).<sup>11</sup> The “sincere will” of the developed countries to contribute sufficient money for the developing countries to be able to attain the objectives of self-reliance stated in para. (vii) may be called into question, however. It must not be forgotten in this connection that both the United States and the United Kingdom have withdrawn from Unesco since the creation of the IPDC. Also the IPDC is still ten years after its inception constantly suffering from a lack of funding.

Finally, a NWICO “could” be based on (ix) “respect for each people’s cultural identity and for the right of each nation to inform the world public about its interests, its aspirations and its social and cultural values”; (x) “respect for the right of all peoples to participate in international exchanges of information on the basis of equality, justice

<sup>10</sup> Cf. Siebert, Peterson, Schramm, *Four theories of the press*, 1956, pp 73–103.

<sup>11</sup> See further ch. 3.3.1.2.

and mutual benefit”; and on (xi) “respect for the right of the public, of ethnic and social groups and of individuals to have access to information sources and to participate actively in the communication process”. These last three considerations do not necessarily challenge the Western traditional notions of freedom of information either. Some comments may nevertheless be made in relation to these paragraphs.

In the case of item (ix) it could be said that “the right of each nation to inform the world public” already exists, not in the sense that it has been stated explicitly before in any international instrument but, on the other hand, it has never been forbidden. No one can stop any nation from trying to inform the world public on any issue. It may be noted that it is the right of each *nation* which is stated here, not the right of each individual. The individual right to freedom of information is already laid down in international treaties. The fact that nations would have any right to inform the world public on any matter on the whole is quite a new idea and a result of the emphasis on collective “human rights” on the part of the Non-Aligned and formerly Socialist countries. The general “right of each nation to inform” is largely uncontroversial as long as it is not in any way connected with a duty on the part of “the world public” or other nations to publish or listen to the information; it could become controversial if nations could force the media in other nations to publish general information on various issues. The right of correction which is a form of “the right of each nation to inform”, which however does not entail a duty to publish other nations views in general, is foreseen in the International Convention on the Right of Correction.<sup>12</sup> Due to the weak enforcement mechanisms contained in the Convention on the Right of Correction the mass media in the ratifying countries cannot, however, be forced to publish anything at all.

The same as was said in connection with item (ix) can be said in connection with item (x) on “the right of all peoples to participate in international exchanges of information”. The difference here is that it is the right of “each people” and not “each nation” which is in focus (although the terms usually have the same significance at least in the NWICO context), and that peoples should have the more active “two-way” right to “participate” in “exchanges of information” whereas nations should have the somewhat less active “one-way” right just to

<sup>12</sup> Cf. *supra* ch. 1.1.3 (n. 33).

inform. There is nothing particularly controversial for a Western observer in “the basis of equality, justice and mutual benefit” as long as this basis is not, firstly, construed literally and, secondly, made binding on the Western nations. The current international information exchange is neither equal nor just in any absolute sense and precisely this has been one of the reasons behind the demands for a NWICO. The Western nations would not accept NWICO-like obligations indirectly by way of formulations concerning “equality and justice”.

Item (xi), finally, is interesting because it talks of “the right of *the public, of ethnic and social groups and of individuals* to have access to information sources and to participate actively in the communication process”. Item (xi) relates to the national “communication process” whereas item (ix) on “nations” and item (x) on “peoples” relates to the international communication process. It sounds as if there has been some Western influence on the formulation of item (xi). Lately, the remaining Western Member States in Unesco, even considering that the two most ardent opponents of a NWICO have withdrawn, have pressed for the inclusion of references also to “the national level” where the free flow of information and its wider and better balanced dissemination etc. at the international level is mentioned in various documents.<sup>13</sup> This is because of the perceived hypocrisy on the part of the proponents of balance and “true freedom” at the international level who do not allow for either balance or freedom within their respective countries. It is also worth noting that item (xi) also mentions “individuals”.

In paragraph 14 (b) of resolution 4/19 part VI it is stated that “this ‘new world information and communication order’ should be based on the fundamental principles of international law, as laid down in the Charter of the United Nations”. As we have seen it has been the prime (former) Soviet argument in the NWICO debate that “international information relations” like any other international relations should be placed within the general framework of international law. Especially within the framework of state sovereignty and non-intervention in the internal affairs of other states. It would seem therefore as if paragraph 14 (b) is the result of demands from the former Soviet bloc countries. However, when the Non-Aligned countries earlier the same year as

<sup>13</sup> Cf. Unesco, Third Medium-Term Plan (1990–1995), Doc. No. 25 C/4 Approved, res. 104, operative paras. 7.A.(a) and 7.A.(a)(i); Unesco Gen. Conf. res. 4.1, operative paras. 2.A.(a) and 2.A.(a).I, 25th Sess., 1989.

resolution 4/19 was adopted, spelt out what they considered that “*the New International Information Order is based on*”, they too mentioned first of all “the fundamental principles of international law, notably self-determination of peoples, sovereign equality of States and non-interference in internal affairs of other States”.<sup>14</sup>

Paragraph 14 (a) with its eleven subparagraphs analyzed above must in any case be regarded above all as a Non-Aligned part of resolution 4/19, part VI, even though the contents are not only of Non-Aligned inspiration. Having the NWICO concept officially defined has primarily been a claim on the part of the Non-Aligned Countries. The Western countries, as we have seen, have generally regarded the demands even to elucidate the concept of a NWICO with strong suspicion. Firstly because they have opposed any new information order as such, and secondly because they have been of the opinion that Unesco should focus its resources on issues or activities which are of a more practical nature than studies concerning the NWICO concept.<sup>15</sup>

Paragraph 14 (c) seems to be the result of Western demands: “diverse solutions to information and communication problems are required because social, political, cultural and economic problems differ from one country to another and, within a given country, from one group to another”. The Western countries have wanted pluralism to be emphasized—“diverse solutions”—in the field of information and communication both on the international and national level. Pluralism has been the Western counter-demand throughout when the Non-Aligned states supported by the Soviet bloc have advocated state intervention and more regulation in the mass media field—something which the latter countries, on the other hand, have thought to be a guarantee of “true pluralism” considering the current Western domination in communications. In resolution 4/19 one can again see, as in the case of the Mass Media Declaration, how the three different stands of the Non-Aligned, the (former) Soviet bloc and the Western countries have been brought together in an uneasy, partly self-contradictory compromise.

<sup>14</sup> Resolution on the New International Information Order of the Fourth Meeting of the Intergovernmental Council for Coordination of Information Among Non-Aligned Countries, 7 June 1980, Baghdad, part I, operative para. 1.(a), quoted from *New International Information and Communication Order. Sourcebook*, supra ch. 3.1.1 (n. 14), p 302.

<sup>15</sup> Cf. Unesco Gen. Conf., 20th Sess., 1978, Report of Commission IV, p 145; 21st Sess., 1980, Report of Commission IV, pp 177, 182; 23rd Sess., 1985, Report of Commission IV, p 193; 24th Sess., 1987, Report of Commission IV, p 152.

Operative paragraph 15 of resolution 4/19 part VI contains a statement on the subject of which there has been much debate. The General Conference here "[e]xpresses the wish that Unesco demonstrate its willingness in its short-term and medium-term activities to contribute to the clarification, elaboration and application of the concept of 'a new world information and communication order'." Again, as in paragraphs (a) and (b), "a new world information and communication order" is used without any qualifications, although "world" and "and communication" are already qualifications of the original "new international information order". In spite of the fact that it was decided in resolution 4/19 not much was actually done subsequently concerning "the clarification, elaboration and application" of the NWICO concept. It is surprising that the Western countries agreed to the inclusion of paragraph 15, considering also that the concept of a NWICO was in fact in some way defined already in resolution 4/19 itself through the eleven "considerations". The scarcely obligating language used, "that Unesco demonstrate its *willingness* [...]/ to contribute to ...", is perhaps influenced by the Western reluctance vis-à-vis conceptual NWICO studies.

At the General Conference in Belgrade in 1980 the chairman of Programme Commission IV summed up the debate which preceded the adoption of resolution 4/19 by saying, *inter alia*, that all Member States had explicitly or implicitly recognized the necessity and legitimacy of promoting a NWICO and no one had questioned that "this new world order" must be based on: "(i) the elimination of domestic and external barriers [to the free flow of information]; (ii) pluralism of information; (iii) the freedom of the press; (iv) the free circulation of information, ideas and persons."<sup>16</sup> If all agreed on these points, resolution 4/19 should presumably be construed in the light of these points of agreement, which do not seem very "new" at all, with the exception, possibly, of point (i).

The chairman of Commission IV added that he felt "that all the speakers also agreed that this new world information and communication order must necessarily be a result of the ability of the developing countries to succeed in improving their endogenous (sic!) potential and the sincere resolve of the developed countries to help them to equip themselves, to train their own specialists, and to adapt their information and communication media to play a role appropriate to their needs and

<sup>16</sup> Unesco Gen. Conf., 21st Sess., 1980, Report of Commission IV, p 181.

their aspirations.”<sup>17</sup> These Third World demands are quite harmless from a Western standpoint. We can see from this statement of the chairman that the concept of a “new order” is used with two different, logically incompatible, meanings. The first meaning is a normative one, and it was in the normative sense that the concept was used by the Non-Aligned and the former Socialist bloc states in the earlier years of the NWICO debate. The second meaning is empirical, it signifies the new “order” in the sense of “state of things” that will appear when the Third World countries have developed their own communications infrastructure. One could say that the original meaning was deductive whereas the later one is inductive.

Resolution 4/19 may also be read in a way more favourable to the original NWICO claims than has been done here. Nordenstreng, for example, is of the opinion that by and large, resolution 4/19 as a whole was tilted towards the positions of the advocates of a NWICO—perhaps even more so than the MacBride Report itself had been, the appreciation of which is the main objective of resolution 4/19 according to its heading.<sup>18</sup> This in fact undeniable bias caused a sharp political debate within the Western group of countries at the General Conference and almost made the United Kingdom refuse to go along with the otherwise general agreement on resolution 4/19. The reluctance of the United Kingdom was caused primarily by the above-mentioned eleven “considerations” in part VI, which “could” constitute a basis for “this new world information and communication order”.<sup>19</sup> Apparently the US delegation was not as worried as the British.

In Unesco’s Second Medium-Term Plan for 1984–1989 adopted by the General Conference in 1982, it is stated that the strategy of action of Major Programme III “Communication in the service of man” draws on the principles set forth in the Universal Declaration of Human Rights and in the Constitution of Unesco.<sup>20</sup> It is further stated, however, in a characteristically ambiguous manner that Unesco’s strategy of action “could also” be based on the provisions of the Mass Media Declaration, as well as on the resolutions adopted by the General Conference at its

<sup>17</sup> Ibid.

<sup>18</sup> Nordenstreng, *op. cit.* ch. 3.1.2 (n. 61), p. 50.

<sup>19</sup> Ibid.

<sup>20</sup> Unesco Doc. No. 4 XC4/Approved, adopted at the fourth extraordinary session of the Gen. Conf. convened in Paris from 23 November to 3 December 1982, p. 90.

successive sessions, and in particular at its twenty-first session in Belgrade in 1980.<sup>21</sup> Hereafter resolution 4/19 is cited and the above-mentioned eleven considerations on which a NWICO could be based are enumerated. Thus, this resolution with its focus on a NWICO has in theory if not in fact, according to Unesco's own plan, been guiding the work of Unesco in the field of communication during the latter part of the 1980s. The Second Medium-Term Plan is regarded as the most radical, concerning communications, of the three Medium-Term Plans that have been adopted so far. It is the Medium-Term Plan, and it will probably remain the only one, in which the demands for a NWICO have left a distinct trace.

Resolution 4/20 of the Unesco General Conference in 1980 coming between the important resolutions 4/19 and 4/21 is not in any way as significant as the latter two.<sup>22</sup> This resolution is concerned with the application of the Mass Media Declaration adopted by the General Conference in Paris two years earlier. In resolution 4/20 the General Conference notes "the enormous and growing part played by the modern mass media in the lives of individuals and nations in the fields of communication, education and information" and "[c]alls upon the Member States, intergovernmental and non-governmental organizations, journalists and other professionals working in the mass media, as well as their professional associations, to contribute actively to the implementation of the aforesaid Declaration". Resolution 4/20 also "[c]alls upon the Member States to take all necessary steps to ensure that public opinion, journalists and others working in the mass media in their countries become *even more conversant* (emphasized here) with the ... Declaration". It also "[i]nvites the Director-General to ensure that Unesco's programmes in the field of communication are based upon the fundamental principles stated [in the Declaration]", an invitation which was not really responded to by the Director-General.

The Director-General was also invited "to convene in 1983, an international congress /.../ *to be financed from extra-budgetary funds* (emphasized here), to further the application of the Declaration". It is interesting to note that it was pointed out in the resolution that Unesco

<sup>21</sup> Ibid., p 91.

<sup>22</sup> Unesco Gen. Conf. res. 4/20, 21st Sess., 1980. Contrary to the consensus resolutions 4/19 and 4/21, resolution 4/20 was put to the vote in Commission IV with 68 votes for, one against and 27 abstentions.

would not finance this congress because the Western Member States headed by the US and the United Kingdom had been complaining that Unesco spreads its funds on too many activities and uses its money inefficiently. Since they also did not sympathize with the Mass Media Declaration in itself, the Western Member States were probably even more unwilling to contribute economically to a congress to further the application of the Declaration. If such a congress was ever convened it has not left any trace either in available Unesco documents or in articles and books on the subject. In resolution 4/20, finally, the Director-General was invited "to prepare /.../ a comprehensive study on the implementation of the principles set forth in the Declaration". Neither has this study if ever prepared left any trace in the material world as far as this author has been able to establish.

Two non-governmental round tables on "a new world information and communication order" have been jointly organized by the UN and Unesco, in 1983 and 1986 respectively.<sup>23</sup> These round tables were organized in answer to a call in Unesco resolution 4/19 of 1980<sup>24</sup> and in subsequent UN General Assembly resolutions,<sup>25</sup> however, for the convention of an international meeting of experts for the purpose of formulating "specific and practical proposals for the establishment of a [NWICO]", rather than in answer to resolution 4/20 for the purpose of evaluating the effects of the Mass Media Declaration. In the final report of the first round table the Mass Media Declaration is mentioned *en passant*. In the final report of the second round table no reference to the Mass Media Declaration is recorded. The second round table was convened optimistically "in order to follow up in more detail the progress made towards the establishment of a new world information and communication order".<sup>26</sup> After the second round table in 1986, one delegation to the Committee on Information requested that a third round table be held on "the establishment of the new world information and communication order".<sup>27</sup>

<sup>23</sup> For final reports of the round tables see UN, Doc. No. A/AC.198/70 and UN Doc. No. A/AC.198/97 respectively.

<sup>24</sup> Part V, operative para. 13 (h).

<sup>25</sup> UN Gen. Ass. res. 37/94 B, of 10 December 1982; res. 38/82 B, of 15 December 1983; and res. 40/164 B, of 16 December 1985.

<sup>26</sup> UN Gen. Ass. res. 38/82 B, of 15 December 1983, operative para. 17.

<sup>27</sup> UN, GAOR, 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 13.

To the best knowledge of this author, there has been one and only one "evaluation" of the effect of the Mass Media Declaration and this was carried out in 1986–87.<sup>28</sup> This evaluation is referred to in the report of Programme Commission IV in 1987. There was supposed to be an international symposium concerning the Mass Media Declaration too around this time "organized by interested non-governmental organizations and professional associations" but, significantly, according to the Assistant Director-General for Culture and Communication at the 1987 session, this symposium had been "postponed"—it "had not been cancelled", however.<sup>29</sup> In fact, as was mentioned in chapter 3.2.2, the Declaration quickly lost a great deal, if not all, of its original importance. It constitutes a more or less obsolete remnant of the 1970s.

The shift away from the "old" conceptions was also confirmed by the choice of a new Director-General of Unesco, Federico Mayor from Spain, who was elected in 1987. In contrast to M'Bow, Mayor is not personally engaged in the idea of a NWICO. On the contrary the new Director-General promotes practical solutions and the realization primarily of the technical and economic aid aspects implicit in the NWICO demands. Mayor tries as far as possible to avoid the bitter and not so fruitful ideological debates of the 1970s and the beginning of the 1980s. So far, Mayor has not, however, succeeded in attracting the US and the United Kingdom back to Unesco.

A subject on which there have been studies carried out is "the right to communicate".<sup>30</sup> The term was originally coined by the late Jean d'Arcy from France at the end of the 1960s. Not much has resulted

<sup>28</sup> Unesco Gen. Conf., 24th Sess., 1987, Report of Commission IV, p 156.

<sup>29</sup> Ibid.

<sup>30</sup> Cf. Unesco Doc. No. 23 C/13, 12 September 1985, "The Right to Communicate: Report by the Director-General", presented to the Gen. Conf., 23rd Sess., 1985. See also Balle, op. cit. ch. 1.2.1 (n. 21), pp 228–242; Barron, "The Search for Media Accountability", *Suffolk University Law Review*, vol. 19, No. 4, 1985, pp 789–814; Caristi, "The Concepts of a Right to Access to the Media: A Workable Alternative", *Suffolk University Law Review*, vol. 22, 1988, pp 103–130; Chen, 1985, op. cit. ch. 2.1 (n. 1), pp 272–273; Cohen-Jonathan, op. cit. ch. 1.3.2 (n. 42), pp 13–16; *Many Voices—One World. Towards a new more just and more efficient world information and communication order*, supra ch. 3.1.1 (n. 10), recommendation No. 54, p 265; Fisher, "The Right to Communicate: A Status Report", *Reports and Papers on Mass Communication* No. 94, 1981; Lehmann, "The Human Right of Communication", *Revue de Droit International*, vol. 62, 1984, pp 217–244; Newman and Vasak, op. cit. ch. 1.2.1 (n. 3), pp 155–156; *The Right to Communicate: A New Human Right*, Ed. by Desmond Fisher and L.S. Harms, 1983; Strozzi, op. cit. ch. 1.2.1 (n. 11), pp 960, 986. In French the right to communicate is sometimes called "la liberté de communication" which literally means "the 'freedom' of communication" but presumably has the same significance as "the 'right' to communicate", both concepts implying a transcendence of "the freedom of information".

from the proposals for the creation of a new “right to communicate” which implies something more than the right to “seek, receive and transmit information”. It implies the right of everyone to participate actively in the communication process in some way, but it is unclear how it can be distinguished from the right to freedom of expression and information on the one hand, and on the other how it is supposed to be realized. It would seem as if the communication aspirations of each human being necessarily, or at least to a great extent, have to be channelled through the mass media and that not everyone could possibly have access to these media.

“The right to communicate” has been invoked by the advocates of a NWICO but it does not necessarily have to be associated with the NWICO issue. A merit of a concept such as the right to communicate may be that in the light of growing concentrations in the mass media field such a right could give the individual citizens, provided that individuals and not nations are the beneficiaries of this right, help to assert themselves not only against the state, which is the idea of traditional human rights, but also against the large mass media companies. Media concentrations may naturally also be counteracted by other means than a right to communicate.

In the Third Medium-Term Plan of Unesco<sup>31</sup> covering the years of 1990–1995, the Major Programme Area IV “Communication in the Service of Humanity” corresponds to the Major Programme III “Communication in the Service of Man” in the earlier discussed Second Medium-Term Plan for 1984–1989. Within the Major Programme Area IV there are three sub-programmes—“The Free Flow of Information and Solidarity” (IV.1), “Communication for Development” (IV.2) and (IV.3) “The Socio-Cultural Impact of New Communication Technologies”. In the Introduction to Major Programme IV it is said that the concept of a NWICO formed “a notable theme” of the Second Medium-Term Plan.<sup>32</sup> It is also noted that the NWICO concept was developed on the basis of the objectives contained in the paragraph of the preamble of the Constitution of Unesco where the States Parties agree to promote communication between their respective peoples “/.../ for the purposes of mutual understanding and a truer and more perfect knowledge of each other’s lives”. It is further noted, however, that the Executive

<sup>31</sup> Unesco Doc. No. 25 C/4 Approved, Unesco Gen. Conf., 25th Sess., 1989.

<sup>32</sup> *Ibid.*, p 99.

Board of Unesco, at its 129th, 130th and 131st sessions, adopted a new strategy in the field of communication and that Major Programme IV has been formulated as a faithful reflection of this new strategy. One could remark that if the NWICO concept had indeed been developed on the basis of the Constitution of Unesco, the need for a new strategy would have been considerably smaller.

In a crucial decision at its 129th session, in 1988, the Executive Board in fact sealed the fate of the NWICO project for Unesco's part.<sup>33</sup> This decision says in paragraph 25 item (e) that "now that Unesco /.../ without turning its back on the past, is setting out on a path of innovation, it is perhaps the time to take the lessons of past experience to heart and to explore the possibilities of a new strategy whereby the Organization's global objective may be attained in such a manner as to dispel the misunderstandings. That strategy, while recognizing the legitimacy of the call for a new world information and communication order seen as an evolving and continuous process, consists in developing, in countries requesting such assistance, the training of communication professionals and the facilities for a media education that would lay emphasis on the development of critical acumen among users and the capacity of individuals and communities to react to any kind of manipulation and would at the same time promote a better understanding of the means available to users to defend their rights".<sup>34</sup>

In the same paragraph, item (b), it is stated conciliatorily that "at the time when that concept [of a NWICO] was launched, the situation in the information and communication field was one characterized by inequalities in the flow of information and by strong feelings in the developing countries regarding the false, distorted and in any case inaccurate image that was given of their national reality." One could not say that this situation has changed dramatically since the concept was launched in the middle of the 1970s. In any case the catchword in Unesco in the communications field has henceforth been the *new strategy*.

The Third Medium-Term Plan is interesting and significant for the fate of the NWICO plans within the Unesco framework. The Medium-Term Plan is operationalized for the period of 1990–1991 through a particular two-year programme,<sup>35</sup> which is somewhat more detailed

<sup>33</sup> Unesco Executive Board, 129th Sess., Doc. No. 129 EX/Decisions, decision 4.1, 4 July 1988.

<sup>34</sup> Ibid.

<sup>35</sup> Unesco Gen. Conf. res. 4.1, 25th Sess., 1989.

than the Medium-Term Plan. It can be noted that all explicit references to the NWICO concept (as “NWICO”) have been removed, except for the indirect reference caused by the quotation of the above-mentioned 1988 decision of the Executive Board. In the introduction to Major Programme IV in the Medium-Term Plan it is stated that “[i]ts objective throughout is to render more operational the concern of the Organization to ensure a free flow of information at international as well as national levels, and its wider and better balanced dissemination, without any obstacle to the freedom of expression, and to strengthen communication capacities in the developing countries /.../”<sup>36</sup> Western token words like “freedom of expression and information”, “independent media”, “diversity”, “pluralism”, “public *and* private media” etc. are used where the objectives and strategy of Programme IV.1, the most relevant one for this study, are elaborated.<sup>37</sup>

Programme IV.1 is called “The free flow of information and solidarity”. Solidarity in this case means increased support for the IPDC. The Western countries wanted “the free flow of information” to be properly emphasized this time and the Third World countries, as usual, could accept that provided they got promises of aid. Programme IV.1 is divided into two subprogrammes. Subprogramme IV.1.1 is called “The free flow of ideas by word and image”. Here this expression, which is quoted directly from the Constitution of Unesco Article 1.2.(a), is used without any qualifications referring to balance, equality, solidarity etc. This subprogramme “seeks to ensure the free flow of information, at international as well as national level, and its wider and better balanced dissemination, without any obstacle to freedom of expression.” Again, the “free flow” of information in itself is not qualified. In the Second Medium-Term Plan the corresponding phrase was “the free flow and wider and better balanced dissemination of information”.

It can be noted, furthermore, that the free flow should take place both at the international and national level and that its wider and better balanced dissemination must not entail any obstacle to freedom of expression. “Wider and better balanced” is thus subordinated to “freedom of expression” which is very important from a press freedom point of view. “Wider and better balanced” is the closest the Third Medium-Term Plan gets to the concept of a “NWICO”. The insertion of “the

<sup>36</sup> Third Medium-Term Plan 1990–1995, Unesco Doc. No. 25 C/4 Approved, p 101.

<sup>37</sup> *Ibid.*, p 105.

international and national level” as well as “without any obstacle to freedom of expression” were Western initiatives.

At the operational level “The free flow of ideas by word and image”, *inter alia*, implies (i) encouraging the free flow of information, at international as well as national level; and (ii) promoting the wider and better balanced dissemination of information, without any obstacle to freedom of expression. Relating to these items an interesting footnote is added in the Medium-Term Plan, as well as in the two-year programme. The footnote says: “It being understood that the distinction between the first two concepts, set out under (i) and (ii), which are complementary but separated above for operational reasons, cannot be interpreted as excluding one or other of them, or as setting one against the other.” The footnote gives an indication of the discussions which has preceded the formulation of subprogramme IV.1.1. The Western countries want “free flow” to stand unqualified or uncompromised. For the Third World countries a free flow is a “balanced flow” or, to put it differently, a free flow is not free unless it is balanced. Therefore they would have wanted the two concepts to be intertwined—“free and balanced”—as in the Second Medium-Term Plan. This, on the other hand, the Western countries refused to accept and the resulting compromise is the two separate items with a footnote saying that they are not really separated.

In the background to Programme IV.1 sketched before the actual resolution on the Third Medium-Term Plan some very severe self-criticism is launched on the part of Unesco concerning the Second Medium-Term Plan (1984–1989) in the field of communication: “This programme /.../ as a whole ... encountered a number of difficulties ... Particularly in the early years of the Plan, too much attention was given to standard-setting and quasi-normative actions. It was too wide-ranging, making it impossible to match its objectives to the available resources, to transform some of its theoretical results into practical action or to disseminate certain of its findings adequately. /.../ There has been a tendency, during the second Medium-Term Plan, to deal with communication development in a relatively piecemeal way, treating individual media institutions or activities, such as training, as separate elements. /.../ This approach has had minimal results in terms of actual change /.../”<sup>38</sup>

Subprogramme IV.1.2 “Communication and solidarity” implies the

<sup>38</sup> Ibid., pp 104–105.

reinforcement of all the functions of the IPDC. Primarily the mobilization of increased resources from the industrialized countries on which all functions of the IPDC rely. At the 1991 General Conference the overall title of Programme IV.1 was changed into "The free flow of ideas by word and image" and the references to "solidarity" were deleted.<sup>39</sup>

Programme IV.2 of the Medium-Term Plan for 1990–1995, "Communication for development", is not controversial and has as its purpose to use communication media to help in the overall development of underdeveloped countries or (a) "to establish linkages between communication and the development of societies" and (b) "to train journalists and other communication professionals /.../". As from the 1991 General Conference the purpose of Programme IV.2 is furthermore to strengthen the communication capacities in the developing countries since matters relating to the IPDC have been moved to this programme from Programme IV.1.<sup>40</sup>

Under Programme IV.3, finally, "The socio-cultural impact of new communication technologies" should be studied, according to the title and item (a), and media education, by emphasizing the development of critical awareness, should be developed according to item (b). Item (b) is reminiscent of the Executive Board decision of 1988 referred to above where the development of "facilities for a media education that would lay emphasis on the development of critical acumen among users and the capacity of individuals and communities to react to any kind of manipulation" is part of Unesco's new strategy in communication. Maybe since Unesco has proven unable to achieve regulation which would in some way abolish the allegedly distorted reporting of the Western international news agencies, the Organization from now on promotes critical awareness on the part of the consumers so that they will not be unduly influenced by the Western media messages.

In comparison with the Second Medium-Term Plan, it can also be noted that whereas the Second Medium-Term Plan included three references to the Mass Media Declaration of 1978 in addition to a subprogramme relating exclusively to the Declaration, the Third Medium-Term Plan only includes one reference to the Declaration, in the preamble, and there is no longer a corresponding subprogramme. Also, the Universal Declaration of Human Rights and the International Covenant

<sup>39</sup> Unesco Gen. Conf. res. 4.1, operative para. 2 A., 26th Sess., 1991.

<sup>40</sup> Ibid., operative para. 2 B.

on Civil and Political Rights are mentioned in the preamble of the Third Medium-Term Plan resolution in contrast to the Second.

Other issues which have earlier caused much controversy and which have disappeared from Unesco's Third Medium-Term Plan are the right to communicate, access and participation, and communicators' responsibilities. All three of these issues are Third World and former Soviet bloc issues. The right to communicate and access and participation (on the international news market) have been Third World claims primarily while responsibility on the part of communicators has been claimed by both the Third World and the Soviet bloc.

With the Third Medium-Term Plan Unesco seems to have come full circle back to the early years when the liberal concept of a free flow of information was solely predominant and the efforts of Unesco in the communications sector were simply focussed on the training of journalists and the building up of communications infrastructures in the developing countries.<sup>41</sup> The era of the 1970s and 1980s when the content of news and information was in focus seems definitively to have passed—furthermore without leaving much imprint on the relevant international law.

To the disappointment of the advocates of a NWICO, presumably, the concept of a "new order" on the whole and its connotations with fundamental restructurings and total changes, was losing much of its earlier force and relevance in the international discussion towards the conclusion of the 1980s, and, what is more, not only in the field of information and communication. At the beginning of the 1990s the concept of a "new order" has reappeared, however, but with a completely different significance than the New International Economic Order and the New International Information Order of the Non-Aligned countries. The "new order" of the 1990s denotes the current friendly relations between the US and the states formerly making up the Soviet Union and the concept has been used primarily by the US. From the Non-Aligned or Third World standpoint generally the new "new order" may even be counter-productive.

<sup>41</sup> Cf. *supra* ch. 3.1.1 p 160. This impression was confirmed at the 26th Sess. of the Gen. Conf. in 1991, see res. 4.1 *passim*. At this session a resolution was even adopted on the "Promotion of press freedom in the world" (res. 4.3).

### 3.3.1.2 *Practical measures*

Of utmost importance for the continuing work with the establishment—or gradual development—of a NWICO was resolution 4/21 adopted by the Unesco General Conference in 1980 and establishing within the framework of Unesco an International Programme for the Development of Communication (IPDC).<sup>42</sup> The initiative to establish the IPDC had been taken by the US. In 1983, according to the records of the General Conference, both the developing and industrialized countries emphasized “that IPDC was of paramount importance in moving towards a new world information and communication order and was, indeed, a vehicle for achieving this goal.”<sup>43</sup>

The establishment of this Programme was preceded by an Intergovernmental Conference for Co-operation on Activities, Needs and Programmes for Communication Development (DEVCOM) convened by the Unesco Director-General and held in Paris in April 1980. This Conference worked out the Programme itself and the statutes for the Intergovernmental Council heading the IPDC and in addition recommended that the General Conference, meeting in the autumn the same year in Belgrade, should adopt the IPDC Programme.<sup>44</sup> The UN General Assembly expressed its appreciation by “taking note with satisfaction” of the establishment by the General Conference of Unesco of the IPDC.<sup>45</sup>

In the preamble of resolution 4/21, the General Conference stresses that “this international programme, aiming to increase co-operation and assistance for the development of communication infrastructures and to reduce the gap between various countries in the communication field, must form part of the efforts for the establishment of a new, more just and more effective world information and communication order”. Since its creation the IPDC has indeed, in accordance with the wishes of the General Conference, formed part of the efforts to establish a NWICO, although since 1989 Unesco is no longer striving to realize a

<sup>42</sup> Unesco Gen. Conf. res. 4/21, 21st Sess., 1980.

<sup>43</sup> Unesco Gen. Conf., 22nd Sess., 1983, Report of Commission IV, p 142.

<sup>44</sup> The Recommendation on the International Programme for the Development of Communication adopted by the Intergovernmental Conference for Co-operation on Activities, Needs and Programmes for Communication Development (Paris, 14–21 April 1980) and the Statutes of the Intergovernmental Council of the International Programme for the Development of Communication are added as Annexes I and II respectively to Unesco Gen. Conf. res. 4/21, 21st Sess., 1980.

<sup>45</sup> UN Gen. Ass. res. 35/201, of 16 December 1980.

“NWICO”. Until 1989, however, the IPDC was the principal if not only instrument used by Unesco for the realization of a NWICO. The immediate concerns of the Programme are exclusively practical—“the development of communication infrastructures”—although, theoretically, its aim in the long run, at least until 1989, may have been to establish a “new order” also in some other sense than a purely practical one.

Sur writes that the essence of the IPDC is not found in the legal sphere; it is a programme which should bring forth tangible realizations, and whose aim is more operational than normative.<sup>46</sup> In other words, it is more a question of transforming communication than regulating it. Sur is of the opinion, furthermore, that by means of the IPDC the NWICO has gone from one stage in its development to another and that the IPDC proves a forward movement.<sup>47</sup> Sur also makes the interesting remark that the NWICO by arriving at an operational stage in its development has reached further than the NIEO will probably ever reach.<sup>48</sup> This in spite of the fact that the intended content of the NIEO has been formulated more explicitly and that the concept of the NIEO itself is more established and widely spread in the international discussion.

The main function of the IPDC is to administer capital intended for the financing of different information and communication projects all over the developing world. The funding of the different projects is supposed to be extra-budgetary, i.e. the IPDC does not constitute a part of the regular budget of Unesco but is dependent on voluntary contributions—monetary and in kind—by the Member States and other willing donors. The running expenses of the Intergovernmental Council at the head of the IPDC and its subsidiary bodies, however, according to Article 9 of the Statutes of the Council shall be covered by Unesco.

Furthermore, according to Article 8 of the Statutes of the Intergovernmental Council, the Director-General, who shall administer the IPDC as a whole, shall make the necessary secretariat and facilities available to the Council. From the beginning, in order to secure the launching and implementation of the initial phase of the IPDC the sum of USD 1,750,000 was made available within the framework of the

<sup>46</sup> Cf. Sur, *op. cit.* ch. 1.2.2.2 (n. 65), p. 56.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, p. 64.

approved regular budget of Unesco for 1981–1983.<sup>49</sup> According to Article 4 para. 2 of the Statutes of the Intergovernmental Council, the Council may under its Rules of Procedure establish whatever subsidiary bodies it considers appropriate, provided “that the necessary financial resources are available”.

The fact that funds will have to be sought outside Unesco is expressed in part V of the Recommendation on the IPDC adopted by the DEVCOM conference in April 1980 and subsequently endorsed by the General Conference through resolution 4/21, where the DEVCOM recommends that, apart from the necessary secretariat provided by the Director-General, “to secure satisfactory implementation of the International Programme for the Development of Communication, additional resources should be sought from all possible sources—developing and developed countries, international organizations and agencies of the UN system as well as other intergovernmental and non-governmental organizations, professional groups and other available sources—in the form of financial means, manpower, materials, technology and training for the development of communication. To this effect an appropriate system of financing and resources should be established”. This system of financing should be devised by the Intergovernmental Council.<sup>50</sup> It is obvious that “additional resources” in this sense are absolutely necessary for the function of the IPDC; the locution used—“to secure satisfactory implementation”—is an understatement.

Apart from the running expenses covered by the regular budget of Unesco, the IPDC receives voluntary monetary contributions of two kinds, contributions to the Special Account and funds-in-trust. Whereas the Intergovernmental Council disposes of the Special Account which constitutes the real budget of the IPDC, each donor country keeps the right to decide in what way its funds-in-trust contributions shall be used. As of 31 May 1989, according to the IPDC report, total contributions pledged to the IPDC’s Special Account amounted to USD 17,468,336 whereas special allocations of funds for IPDC approved projects (funds-in-trust) totalled approximately USD 19,700,000;<sup>51</sup> in

<sup>49</sup> Cf. Unesco Gen. Conf. res. 4/21, part IV, para. 4 (c), 21st Sess., 1980.

<sup>50</sup> Article 5 item (f) of its Statutes, Annex II to Unesco Gen. Conf. res. 4/21, 21st Sess., 1980.

<sup>51</sup> Unesco Doc. No. 25 C/94, 20 July 1989, Report by the Intergovernmental Council of the International Programme for the Development of Communication on its Activities, presented to the Gen. Conf., 25th Sess., 1989, p 2,

the Unesco periodical *Unesco Sources* it was written in April 1989 that, so far, the IPDC had funded 370 communication projects in 85 countries and had raised USD 16,000,000.<sup>52</sup> Applications for funding are submitted to the IPDC which decides which projects shall be approved and then the money in the Special Account and the funds-in-trust are used to finance the approved projects. In 1988–89 the Special Account could meet about one third of the requests for assistance.<sup>53</sup>

According to the report of the IPDC in 1989, 42.5 per cent of the financing from the Special Account in 1988–1989 went to research and vocational training; 17.8 per cent went to news agencies and networks; another 17.8 per cent went to radio/television and telecommunications; 15 per cent went to audio-visual production; and 6.9 per cent went to publications, newspapers and books.<sup>54</sup>

Representatives of the IPDC often complain that the financial contributions are on the whole too small, and that the Member States are relatively unwilling to contribute to the Special Account of the IPDC which means that the donors lose the exclusive control over how their contributions are used.<sup>55</sup> The US and the United Kingdom who since the creation of the IPDC have withdrawn from Unesco will no doubt be particularly unwilling to make any contributions whatsoever, ironically enough considering that the US was one of the “founding fathers” of the IPDC, efficiently diverting the demands for a new order, according to Nordenstreng.<sup>56</sup> Apparently the financial situation of the Special Account is, however, getting better.<sup>57</sup>

In 1987, the then chairman of the Intergovernmental Council of the IPDC, Gunnar Garbo from Norway, said that “[i]t cannot be emphasized too strongly /.../ that the IPDC needs access to a solid, regular supply of resources provided without conditions, in order to be able to meet those needs perceived by the developing countries themselves and to finance the projects which they design as a solution to their own problems. /.../ Offers of funds-in-trust and aid in kind are ... also wel-

<sup>52</sup> *Unesco Sources*, No. 3, April 1989, p 21.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*, p 3.

<sup>55</sup> Cf. Graubart, *op.cit.* ch. 2.3 (n. 2), pp 634–635.

<sup>56</sup> Cf. Nordenstreng, *op. cit.* ch. 3.1.2 (n. 61), p 5.

<sup>57</sup> Cf. Intergovernmental Council of the International Programme for the Development of Communication, Paris, Twelfth session, 11–18 February 1991, Final Report, Doc. No. CII/MD/1, p 4.

come, but this should not transform the Intergovernmental Council into a device for merely putting a rubber stamp on arrangements between donors and receivers.”<sup>58</sup> Since the establishment of the IPDC, Norway is still the Programme’s main donor.<sup>59</sup>

One significant paragraph in the DEVCOM recommendation on the IPDC is part IV para. (i) where the recommendation talks about the constitution and function of the Intergovernmental Council heading the IPDC. The Intergovernmental Council itself to begin with should be “composed of thirty-five Member States elected by and responsible to the General Conference of Unesco on the basis of equitable geographical distribution and applying the principle of rotation”. “It will be the task”, furthermore, “of the Intergovernmental Council to implement the objectives set out in this recommendation.”

After this, and importantly, it is added that in the deliberations of the Council “priority should be given to seeking a consensus”. This is a principle which has been guiding the activities of the General Conference of Unesco as well, although no statement similar to the one in DEVCOM’s recommendation is found in the Unesco Constitution. Nevertheless according to Article 25 para. 1 of the Rules of Procedure of the Intergovernmental Council, adopted by the Council itself at its first session in June 1981, decisions are made by a majority of the Member States present and voting.<sup>60</sup> Considering the fact that the activities of the IPDC are based on voluntary contributions, the members of the Intergovernmental Council had better nevertheless be faithful to the consensus principle.

Unesco’s then Deputy Director-General for the IPDC, Eduardo Portella, at the tenth session of the Intergovernmental Council of the IPDC in March 1989, called for two major objectives to be attained at the meeting.<sup>61</sup> The first was to focus energies and resources on a much smaller number of projects selected on the basis of their “real impact” in results and in attracting funding. The second objective was to

<sup>58</sup> Unesco Gen. Conf., 24th Sess., 1987, Report of Commission IV, p 151.

<sup>59</sup> Unesco Doc. No. 25 C/94, 20 July 1989, Report by the Intergovernmental Council of the International Programme for the Development of Communication on its Activities, *supra* (n. 51), p 2.

<sup>60</sup> Intergovernmental Council of the International Programme for the Development of Communication (First session), Paris, 15–22 June, 1981, Final Report, Unesco Doc. No. CC/MD/47, Annex IV, p 6.

<sup>61</sup> *Unesco Sources*, No. 3, April 1989, p 21. Cf. also Intergovernmental Council of the International Programme for the Development of Communication (Tenth session), Paris, 7–13 March 1989, Final Report, Unesco Doc. No. CC/MD/10, p 1.

increase financial resources so that projects of “major proportions which would have a multiplier effect” could be launched. To this end a planned 60 per cent increase in programme budgeting for 1990–1991 to support the IPDC’s fund-raising and project preparation activities was announced.<sup>62</sup> As a result of the desired rationalization and effectiveness of the IPDC supported projects, 18 projects were approved and financed at the tenth session, from the Special Account, compared with 55 projects approved and financed at the ninth session.<sup>63</sup> Originally, the IPDC only funded government projects in the developing countries but in recent years the IPDC has accepted to support private projects also. The Assistant Director-General for Communication, Information and Informatics, Henrikas Yushkiavitchus, has also encouraged the seeking of financial contributions from the private sector.<sup>64</sup>

At the closure of the twelfth session of the Intergovernmental Council of the IPDC in 1991, its current chairman, François Nordmann, observed that the endeavours of the Council had matched the *new strategy* adopted by Unesco in the field of communication.<sup>65</sup> The *new strategy*, laid down by the General Conference in 1989, had been a welcome achievement, according to Nordmann, in that it marked the end of a decade of controversy (which included administrative controversy within the IPDC).<sup>66</sup>

During the general discussion within the Intergovernmental Council at its twelfth session, the participating delegates also generally welcomed the *new strategy*.<sup>67</sup> With a somewhat euphemistic formula some delegates pointed out that it had resolved the “seemingly conflicting perceptions” of the developing and developed countries in the field of the free flow of information and its wider and better balanced dissemination.<sup>68</sup> Some delegates were of the opinion that the *new strategy* also marked a step in the direction of achieving a “new world [information

<sup>62</sup> Ibid.

<sup>63</sup> Unesco Doc. No. 25 C/94, 20 July 1989, Report by the Intergovernmental Council of the International Programme for the Development of Communication on its Activities, *supra* (n. 51), p. 3.

<sup>64</sup> Cf. Intergovernmental Council of the International Programme for the Development of Communication (Twelfth session), Paris, 11–18 February 1991, Final Report, Doc. No. CII/MD/1, p. 4.

<sup>65</sup> Ibid., p. 18.

<sup>66</sup> Ibid., p. 2. In reality the NWICO-related controversy had lasted for more than a decade when the *new strategy* was adopted in 1989.

<sup>67</sup> Ibid., p. 5.

<sup>68</sup> Ibid.

and communication] order seen as an evolving and continuing process".<sup>69</sup> These delegates, however, do not seem to have fully understood the meaning of the *new strategy*.

### 3.3.2 The United Nations General Assembly

The NWICO debate reached its height in the UN General Assembly a couple of years later than in Unesco. From the beginning Unesco was regarded as the natural forum for the NWICO issue but as the NWICO proponents little by little were pushed back in Unesco by Western resistance they started looking at the UN General Assembly as a suitable forum where the struggle for a NWICO could be continued. This became particularly clear after the adoption of the Mass Media Declaration in 1978. The question whether the NWICO issue really belongs in the UN General Assembly on the whole has been controversial. The NWICO opponents have generally been of the opinion that the issue belongs in Unesco, and only there, since Unesco is the specialized organ which deals, *inter alia*, with communication issues.<sup>70</sup> The NWICO proponents for their part have claimed that the NWICO issue is of such importance that it should be dealt with also by the UN General Assembly, being the highest political assembly within the UN system.

In 1975 the UN General Assembly adopted resolution 3535 (XXX), tabled by Colombia, requesting the Secretary-General, *inter alia*, to submit to the Assembly at its thirty-third session, in 1978, a report on the activities of the Department of Public Information (DPI).<sup>71</sup> The General Assembly also, and importantly, decided to consider the question at the 1978 session "as a separate item entitled 'United Nations public information policies and activities'." The issue of the UN public information policies and activities was then transferred from the Fifth Committee on administrative and budgetary questions to the Special Political Committee (SPC), as was the traditional issue of "freedom of information" which up until then had been dealt with in the Third Committee on social, cultural and humanitarian questions.<sup>72</sup> It was

<sup>69</sup> Ibid.

<sup>70</sup> Cf. for example UN, GAOR, 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 12. According to Sur, Unesco has affirmed its predominance in the communication field by the creation of the IPDC (Sur, op.cit. ch. 1.2.2.2 (n. 65)), p 60.

<sup>71</sup> Adopted on 17 December 1975.

<sup>72</sup> Cf. Questions relating to information, Report of the SPC, UN Doc. No. A/33/511, 16 December 1978.

Tunisia who suggested that the UN information policy should be considered as a separate item on the agenda of the General Assembly. As we have seen, Tunisia was also a forerunner in the struggle for a NWICO, through its permanent delegate to Unesco Mustapha Mas-moudi.

According to the report of the Swedish delegation in 1975, the Tunisian proposal, that the UN public information policies and activities should be considered as a separate item on the agenda of the General Assembly, caused much discussion in the Fifth Committee and it was accepted by 63 votes in favour (the Eastern bloc and most developing countries), 17 votes against (the Nordic countries except Finland, most Western countries, Algeria and India) and 20 abstaining (Finland, China, Japan, some developing countries).<sup>73</sup> The voting figures illustrate the usual dividing lines in the NWICO debate, with the exception that Algeria, India and China are generally among the ones in favour although at this occasion they voted against and abstained respectively.<sup>74</sup>

The opposition against the Tunisian proposal was caused by the perceived risk that the UN public information from then on would be dominated by political overtones, and that the information within the economic and social field would be neglected.<sup>75</sup> The Swedish delegation, in explanation of its vote against the Tunisian proposal, emphasized the importance felt on the part of Sweden of information about economic and social development, human rights and other humanitarian questions and the fears that the questions relating to UN public information would henceforward be dealt with in a Committee where these important issues would not get the attention they deserved.<sup>76</sup>

In 1978, when the Secretary-General had presented his report on the activities of the Department of Public Information, the General Assem-

⇒ 1978, p 1; Questions relating to information, Report of the SPC, UN Doc. No. A/34/808, 13 December 1979, p 1. The exclusively administrative and financial aspects of the UN public information policies and activities are still handled by the Fifth Committee.

<sup>73</sup> Cf. *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], Ny serie 1:A:27, Förenta Nationernas generalförsamlings trettionde ordinarie möte, New York, 1975, p 293.

<sup>74</sup> The result of the vote in the General Assembly concerning res. 3535 (XXX) was 109-1 (the US) -22 ( remaining Western states).

<sup>75</sup> Cf. *Aktstycken utgivna av utrikesdepartementet*, [Documents published by the Swedish Ministry for Foreign Affairs], supra (n. 73), p 293.

<sup>76</sup> Ibid.

bly decided to establish a Committee to Review United Nations Public Information Policies and Activities.<sup>77</sup> The Committee was requested to submit a report at the thirty-fourth session of the General Assembly in 1979. Then in 1979 the General Assembly decided to maintain the Committee under the name simply of the "Committee on Information".<sup>78</sup> The mandate of the Committee on Information became the following: "(a) To continue to examine United Nations public information policies and activities, in the light of the evolution of international relations, particularly during the past two decades, and of *the imperatives of the establishment of the new international economic order and of a new world information and communication order*; (b) To evaluate and follow up the efforts made and the progress achieved by the United Nations system in the field of information and communications; (c) To *promote the establishment of a new, more just and more effective world information and communication order* intended to strengthen peace and international understanding and based on the free circulation and wider and better balanced dissemination of information and to make recommendations thereon to the General Assembly" (emphasis added).

It can be noted in connection with the mandate of the Committee on Information that the NWICO is referred to by two different names in paras. a) and c) respectively. "A new more just and more effective world information and communication order" is a less radical linguistic form of a "NWICO". Maybe it was too much for the Western states to accept the actual promotion of the establishment of a "NWICO". It can also be noted in para. a) that the NIEO is referred to as *the* new international economic order whereas the NWICO is referred to as *a* new international information and communication order.

The NWICO debates in the UN Committee on Information have been of a similar character as those in the respective Programme Commissions of the General Conference of Unesco. Largely the same arguments have been used by the different sides in the debate. If anything the proponents of a NWICO have been more radical and ideological in the Committee on Information than in Unesco and they have stayed radical for a longer time. There were irreconcilable differences between the South and the West as late as in 1989. The possibility of working out a Declaration on the Establishment of a New World Information and

<sup>77</sup> UN Gen. Ass. res. 33/115 C, of 18 December 1978.

<sup>78</sup> UN Gen. Ass. res. 34/182, part I, of 18 December 1979.

Communication Order was envisaged in a resolution in 1980, but the matter has not been carried further than that.<sup>79</sup>

The height of the NWICO issue in the Committee on Information was reached in the middle of the 1980s, when the centre of the NWICO debate had also moved from Unesco to the UN. By the end of the 1980s the Eastern bloc representatives in the Committee including the Soviet one, although not voting against, stopped actively supporting the Southern claims and began instead acting as a kind of mediator between the Southern and Western groups.<sup>80</sup> As in the world at large, 1989 was a decisive year also in the Committee on Information, however this did not clearly show until 1990.

Those critical of the NWICO claims say that the Third World countries can afford to be radical—and irresponsible and little constructive—in the UN Committee on Information because they know that their claims, even if adopted (by majority vote), will never be realized anyway because of Western opposition and, accordingly, that the Third World “hardliners” will never have to take the real consequences of their standpoints; it is a theoretical political discussion taking place in the Committee as far as the NWICO issue is concerned. And in fact, nothing has actually been done, as opposed to discussed, by the UN General Assembly to bring about a NWICO, no practical projects have resulted from the debates in the Committee on Information.

Another more institutional explanation of the harshness of the NWICO advocates in the UN Committee on Information is that there has not been the same emphasis on consensus in UN as in Unesco. While the outcome of the debates in Unesco has been modified by the consensus rule, the former Soviet bloc and the Third World countries in the UN Committee on Information have been able to use majority voting to overcome Western opposition to a NWICO. Because of these combined reasons, i.e. the alleged irresponsible radicalism of the Third World countries and the lack of consensus rule, the confrontational ideological climate of the 1970s was conserved in the Committee on Information long after it had disappeared from other fora.

Since the primary task of the UN Committee on Information in reality is to give policy recommendations for the benefit of the Department

<sup>79</sup> UN Gen. Ass. res. 35/201, of 16 December 1980, part I, operative para. 2.

<sup>80</sup> Information obtained during interview with Lisette Lindahl-Owens, Swedish Ministry of Foreign Affairs, former member of the Swedish permanent mission of Sweden to the UN General Assembly.

of Public Information (DPI) of the UN Secretariat, many (Western) observers have regretted the stalemate that the NWICO debate has caused in the Committee.<sup>81</sup> The theoretical differences of opinion concerning a NWICO have spilt over to the issue of the more practical guidelines that the Committee has been supposed to give to the DPI. The effect has been that consensus has not been reached on the DPI guidelines either, which in its turn has been detrimental to the work of the DPI. The chairman of the Committee on Information pointed out at the opening of the 1989 session, that by consensual agreement on the recommendations of the Committee, the DPI would be “strengthened to carry out the mandates entrusted to it.”<sup>82</sup>

However, the recommendations issued by the Committee on Information have been so numerous and so woolly that the DPI could never have carried them out completely under any circumstances. This state of affairs is referred to by the current chairman of the Committee in 1991 when he calls the former recommendations of the Committee simply “unworkable”.<sup>83</sup> Observers critical of the Third World acting in the Committee on Information have noted, that the Third World countries seem to want to use the DPI as their own international news agency instead of letting the DPI inform the world about the work of the UN, as it should do. Parenthetically it can be added that in the later years of the NWICO debate it was first and foremost the US which made consensus impossible in the Committee on Information, sometimes in fact causing considerable irritation among the other Western delegates by its rigid stance.

The view that there is a need for a NWICO has evidently been expressed many times during the debates in the UN Committee on Information.<sup>84</sup> As late as in 1989, one delegation to the Committee on

<sup>81</sup> Cf. UN, GAOR, 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 12; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, pp 10–11, 27; 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 12; 45th Sess., 1990, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/45/21, pp 8–9.

<sup>82</sup> UN, GAOR, 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 17.

<sup>83</sup> Cf. UN, GAOR, 46th Sess., 1991, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/46/21, Annex I, Statement by the Chairman of the Committee on Information at the opening of its thirteenth session, p 34.

<sup>84</sup> Cf. UN, GAOR, 35th Sess., 1980, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/35/21, p 5; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7; 40th Sess. 1985, Suppl. No. 21, Report of the Committee on Information, Doc. ↵

Information optimistically suggested the convening of a special session of the General Assembly to deal with “the issue of new world information and communication order (sic!)”.<sup>85</sup>

Concerning the arguments for and against a NWICO, the quantitative<sup>86</sup> and qualitative<sup>87</sup> imbalances in the international news exchange and the developing countries’ dependency on the developed countries<sup>88</sup> can be recognized from the Unesco debates. The view that the State should be responsible for the activities of the mass media<sup>89</sup> and that the mass media should further international peace, co-operation and under-

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No. A/40/21, p 12; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 12; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, p 9; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, pp 7, 10; 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, pp 6, 7; 45th Sess., 1990, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/45/21, p 7.

<sup>85</sup> UN, GAOR, 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 7.

<sup>86</sup> Cf. UN, GAOR, 34th Sess., 1979, Supplement No. 21, Report of the Committee on Information, Doc. No. A/34/21, p 17; 35th Sess., 1980, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/35/21, p 5; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, pp 7, 11; 38th Sess., 1983, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/38/21, p 10; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 32; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, pp 12, 29, 46; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, pp 12, 34; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, pp 9, 11; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, pp 7, 9, 10, 11, 23; 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, pp 6, 7, 16; 45th Sess., 1990, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/45/21, p 7; 46th Sess., 1991, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/46/21, p 7.

<sup>87</sup> Cf. UN, GAOR, 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 7; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, pp 8, 36; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 32; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, pp 12, 46; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 12; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, pp 9, 11; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 7; 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 6.

<sup>88</sup> Cf. UN, GAOR, 35th Sess., 1980, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/35/21, p 6; 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 6; 38th Sess., 1983, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/38/21, p 10; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 32; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 34; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, p 10; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 10.

<sup>89</sup> Cf. UN, GAOR, 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 9; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7.

standing<sup>90</sup> can also be recognized from the debates in Unesco. The cherished “information sovereignty” argument<sup>91</sup> has similarly occurred in the Committee on Information as has, further, the view that state sovereignty and non-interference in the internal affairs of other states are central principles in the field of international communications.<sup>92</sup> Also the information and cultural imperialism and the resulting neo-colonial situation<sup>93</sup> sound familiar as do the calls for decolonization and democratization of information.<sup>94</sup> The right to communicate has also been called for in the Committee on Information,<sup>95</sup> as has the possibility of access to and participation in the international news and information flow.<sup>96</sup>

<sup>90</sup> Cf. UN, GAOR, 35th Sess., 1980, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/35/21, p 6; 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 6, 9; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 10; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 47; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, pp 12, 36; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, p 10; 43rd Sess., 1988, Suppl. No. 32, Report of the Committee on Information, Doc. No. A/43/21, p 7.

<sup>91</sup> Cf. UN, GAOR, 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 46.

<sup>92</sup> Cf. UN, GAOR, 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 9; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7; 38th Sess., 1983, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/38/21, p 9; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 10; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 13; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 12; 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 7; 45th Sess., 1990, Suppl. No. 21, Committee on Information, Doc. No. A/45/21, p 7.

<sup>93</sup> Cf. UN, GAOR, 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7; 38th Sess., 1983, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/38/21, p 10; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 13; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 10.

<sup>94</sup> Cf. UN, GAOR, 34th Sess., 1979, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/34/21, pp 13, 17; 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 36; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, pp 12–13; 45th Sess., 1990, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/45/21, pp 7–8.

<sup>95</sup> Cf. UN, GAOR, 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 31.

<sup>96</sup> Cf. UN, GAOR, 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 8; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 46; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 35; 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 7.

The most important argument against a NWICO in the UN Committee on Information as well as in Unesco has been that a NWICO would constitute a violation of the freedom of expression and of the press and the free flow of news and ideas.<sup>97</sup> Those who argued against a NWICO have been of the opinion that there should be no state control of the mass media and no officially imposed code of conduct for journalists but that the mass media should be allowed to regulate themselves.<sup>98</sup>

Also the more pragmatic view that the communications infrastructure must be developed in the Third World countries has been heard in the UN Committee on Information<sup>99</sup> and the benefits of regional co-operation and news exchange have been stressed.<sup>100</sup> The growing understanding between the Western countries and the more pragmatic developing countries concerning the nature of the international information problems and how they should be solved can also be noticed in the Committee on Information.<sup>101</sup>

<sup>97</sup> Cf. UN, GAOR, 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7; 38th Sess., 1983, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/38/21, p 9; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 11; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 14; 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, p 10; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, pp 9, 23 (here the chairman of the Committee of Information, then from Spain, underlined “/.../freedom of information as ‘the fundamental value’/.../” of pragmatic NWICO cooperation through Unesco and the IPDC); 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, pp 6, 7; 45th Sess., 1990, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/45/21, p 7.

<sup>98</sup> Cf. UN, GAOR, 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7; 38th Sess., 1983, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/38/21, p 10; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 11; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 14.

<sup>99</sup> Cf. UN, GAOR, 37th Sess., 1982, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/37/21, p 7; 38th Sess., 1983, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/38/21, p 10; 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/39/21, p 32; 40th Sess., 1985, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/40/21, p 46; 41st Sess., 1986, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/41/21, p 12 (here it is also recorded that the Western countries have nothing against the building up of the Third World communications infrastructure); 42nd Sess., 1987, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/42/21, pp 11, 27; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 9 (here it is claimed that there can be no freedom of information until infrastructures have been built up); 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 7; 45th Sess., 1990, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/45/21, p 8.

<sup>100</sup> Cf. UN, GAOR, 36th Sess., 1981, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/36/21, p 8; 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 11.

<sup>101</sup> Cf. UN, GAOR, 39th Sess., 1984, Suppl. No. 21, Report of the Committee on Information,

Every year the Committee on Information has reported to the UN General Assembly. The General Assembly has consequently adopted a yearly resolution on "Questions relating to information" intended primarily to give policy guidelines to the DPI concerning the UN public information activities.<sup>102</sup> The resolutions have generally been divided into two parts, the first giving recommendations to the DPI and the second endorsing the work of Unesco in the communication field, i.e. until lately, the efforts of Unesco to establish a NWICO, from 1983 with the compulsory addition (within Unesco) of "seen as an evolving and continuous process",<sup>103</sup> and the work of the IPDC. The last time that the NWICO efforts of Unesco were reaffirmed by the UN General Assembly was in 1988.<sup>104</sup>

During the 1988 debate in the Committee on Information some representatives were of the opinion that the acceptance of the "seen as an evolving and continuous process" formula (i.e. "a NWICO, seen as an evolving and continuous process") by the Committee on Information, *nota bene* not until 1986, had been "a major concession by developing countries /.../ and it was hoped that reciprocity from the other side would not be found wanting so that a consensus recommendation could be reached."<sup>105</sup> Consensus was not reached at this occasion, however. In the debate references were made to the decision of the Unesco Executive Board at its 129th session in 1988, mentioned above in chapter 3.3.1.1, where the Executive Board decided upon a "new strategy" for Unesco in the field of communication taking "the lessons of past experience to heart", i.e. leaving the NWICO idea behind, in order to "dispel the misunderstandings".<sup>106</sup>

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Doc. No. A/39/21, p 32; 45th Sess., 1990, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/45/21, p 8.

<sup>102</sup> These UN Gen. Ass. resolutions are: 35/201, of 16 December 1980; 36/149, of 16 December 1981; 37/94, of 10 December 1982; 38/82, of 15 December 1983; 39/98, of 14 December 1984; 40/164, of 16 December 1985; 41/68, of 3 December 1986; 42/162, of 8 December 1987; 43/60, of 6 December 1988; 44/50, of 8 December 1989; 45/76, of 11 December 1990; 46/73, of 11 December 1991.

<sup>103</sup> Formula laid down in Unesco Gen. Conf. res. 3.1, para. 8.(d), 22nd Sess. 1983.

<sup>104</sup> Cf. UN Gen. Ass. res. 43/60 B, operative para. 9, of 6 December 1988.

<sup>105</sup> UN, GAOR, 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 9. See also UN Gen. Ass. res. 41/68 A, of 3 December 1986, operative para. 1. The resulting and somewhat paradoxical formula of the UN Gen. Ass. resolutions thus became "the establishment of a new world information and communication order, seen as an *evolving and continuous process*" (emphasis added).

<sup>106</sup> Cf. UN, GAOR, 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 9; see also Unesco Executive Board, 129th Sess., Doc. No. 129 EX/Decisions, ⇒

Still in 1988, when the different political groups in the Committee on Information could not agree on what recommendations to transmit to the DPI, the developing countries worked out draft recommendations to which the other two groups (and China) proposed amendments. It is interesting to note paragraph 2 of the draft where “the important role” of the media is pointed out. The developing countries wrote: “2. Fully aware of the important role that the media world wide can *freely* (emphasized here) play, particularly under the present situation, it is recommended that /.../.”<sup>107</sup> The Western group concerning that part of paragraph 2 proposed the removal simply of “particularly under the present situation”, the meaning of which phrase is highly unclear, whereas the then Socialist states of Eastern Europe proposed the following significant amendment: “Fully aware of the important role that the media world wide *can play in contributing to* (emphasized here) the further improvement of international relations, especially in enhancing and strengthening peace, deepening international understanding, promoting justice, equality, national independence, development, the exercise of human rights and, inseparably linked, the establishment of a new international information and communication order, recommends that /.../.”<sup>108</sup> The Western group for its part also proposed that paragraph 1 of the recommendations to the DPI should begin with a reference to freedom of information as a fundamental human right. The developing countries’ draft was finally adopted by majority vote without amendments.<sup>109</sup>

In 1989 the Committee on Information came a long way on the road towards consensus.<sup>110</sup> For the negotiations the Chairman, according to the Report of the Committee, had worked out two papers, the first one including “those issues relating to ‘the new world information and communication order’” and the second paper including “issues related to the mandate of the Department of Public Information”.<sup>111</sup> As has

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decision 4.1, 4 July 1988.

<sup>107</sup> UN, GAOR, 43rd Sess., 1988, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/43/21, p 43.

<sup>108</sup> Ibid., p 56.

<sup>109</sup> UN Gen. Ass. res. 43/60, of 6 December 1988.

<sup>110</sup> Cf. UN Gen. Ass. res. 44/50, of 8 December 1989; Israel and the US were the only ones who voted against the resolution while most other Western states abstained.

<sup>111</sup> UN, GAOR, 44th Sess., 1989, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/44/21, p 15.

been noted, the intertwining of these two principally unrelated issues and the ensuing ideological and political struggle resulted in the Committee not being able to perform its intended task properly, namely giving policy instructions to the DPI. The idea was to free the discussions on the DPI's mandate from the ideological stalemate and to neutralize the NWICO issue by placing all references to it in a separate part, which was of minimal real significance. The more radical developing countries may have been of the opinion that the NWICO issue was the primary task of the Committee on Information or at least that the NWICO issue did naturally belong together with the issue of the mandate of the DPI. The resulting resolution of the 1989 negotiations is divided into part I entitled "Information in the service of mankind" and part II entitled "United Nations public information policies and activities".

In 1990, eventually, consensus was reached in the Committee on Information. Consensus in this case basically meant that the developing countries, more and more isolated and marginalized in the new climate of détente between the industrialized West and East, decided to agree to the Western demands. Thereby the NWICO issue was punctured for a foreseeable period of time also in the UN General Assembly. In Unesco it was the 1989 General Conference and the Third Medium-Term Plan for 1990–1995 which ended the NWICO era for Unesco's part. In 1990 it was only Cuba in the Committee on Information who still acted in the "old" way. Cuba presented a draft resolution requesting the Secretary-General in co-ordination with the Committee on Information and through the DPI to launch a world decolonization campaign.<sup>112</sup>

Not that the disparities in communication capabilities between the West and the South have disappeared, they will no doubt remain and perhaps even grow,<sup>113</sup> but serious global discussion in terms of "a new world information and communication order", with its normative "anti-liberal" ring, has through the UN resolution of 1990 definitively been

<sup>112</sup> Questions relating to information, Report of the SPC, UN Doc. No. A/45/825, 6 December 1990, pp 5–7. Cuba was persuaded to withdraw its draft resolution in the SPC.

<sup>113</sup> Some observers think that in the long run the technical developments in communications will automatically solve the problems of information imbalances between the West and the Third World by making equipment cheaper and more adapted to the needs of the developing countries and access to the international communications market easier. Leonard R. Sussman at Freedom House in New York, for example, is of this opinion which he discusses, among other things in *Power, the Press and the Technology of Freedom. The Coming Age of ISDN*, 1989. (ISDN here means Integrated Systems of Digital Networks.)

ended.<sup>114</sup> Still, promotion of the establishment of a NWICO remains included in the mandate of the Committee on Information and at the thirteenth session of the Committee in 1991 “many delegations reiterated their call for a new world information and communication order”, without these calls leaving any trace in the ensuing resolution, however.<sup>115</sup> One representative noted that “since the adoption of a declaration on the new world information and communication order nothing had changed” (as regards real communication capabilities of the developing and developed countries respectively).<sup>116</sup>

The decisive consensus resolution on “Questions relating to information” of 1990 is divided into two parts as in 1989. Part A is entitled “Information in service of humanity”. In part B concerning “United Nations public information policies and activities” no reference is made to the NWICO issue in any form. The Secretary-General is requested, *inter alia*, “/.../ to ensure that the activities of the Department of Public Information /.../ are strengthened and improved /.../ so as to ensure an objective and more coherent coverage of, as well as better knowledge about, the United Nations and its work.”<sup>117</sup> Unesco is mentioned once and only in so far as the DPI should “co-operate more regularly” with Unesco, “‘especially at the working level’, with a view to maximizing the contribution of the (DPI) to the efforts of that organization.”<sup>118</sup> The “working level” probably means the practical level as opposed to the “political” or “conceptual level”.

Part A of the resolution is entitled “Information in service of humanity”<sup>119</sup>. It is permeated by a “free flow of information at all levels” perspective and talks throughout only of support to the developing countries for the strengthening of communication capacities and improvement of media infrastructures and communication technology (as

<sup>114</sup> Cf. UN Gen. Ass. res. 45/76 A and B, of 11 December 1990.

<sup>115</sup> UN, GAOR, 46th Sess., 1991, Suppl. No. 21, Doc. No. A/46/21, p 8; res. 46/73 A and B, of 11 December 1991. The issue does remain important for the Movement of Non-Aligned Countries (cf. Third Conference of Ministers of Information of the Movement of Non-Aligned Countries, Havana, Cuba, 24–28 September 1990, Final Report, Doc. No. NAC/CONF.9/MMI/DOC.1/Rev.4.)

<sup>116</sup> UN, GAOR, 46th Sess., 1991, Suppl. No. 21, Report of the Committee on Information, Doc. No. A/46/21, p 8.

<sup>117</sup> UN Gen. Ass. res. 45/76 B, of 11 December 1990, operative para. 2.

<sup>118</sup> *Ibid.*, item (a).

<sup>119</sup> UN Gen. Ass. res. 45/76 A of 11 December 1990. Exactly the same text was adopted as part A of resolution 46/73 of 11 December 1991.

opposed to normative statements).<sup>120</sup> In one paragraph “full support” for the IPDC is provided. When the term “media” is used, “public, private or other” is always added, as in Unesco starting from the 1989 General Conference. Part A of the resolution is devoid of any kind of normative original NWICO element. The third preambular paragraph is particularly interesting in this respect. It is a kind of programmatic paragraph concerning a NWICO which has appeared in different forms in almost all of the yearly recommendations of the Committee on Information, radically watered down at the end of the 1980s.

This paragraph in its 1990 consensus version reads: “The General Assembly /.../ (u)rges that all countries, organizations of the United Nations system as a whole and all others concerned, reaffirming their commitment to the principles of the Charter of the United Nations and to the principles of *freedom of the press and freedom of information*, as well as to those of the *independence, pluralism and diversity of the media*, deeply concerned by the *disparities* existing between developed and developing countries and the consequences of every kind arising from those *disparities* that affect the capability of the *public, private or other media and individuals* in developing countries to disseminate information and communicate their views and their cultural and ethical values through endogenous cultural production, as well as to ensure the *diversity of sources* of and their *free access to information*, recognizing the call *in this context* for what in the United Nations and at various international forums *has been termed* ‘a new world information and communication order, seen as an evolving and continuous process’, should: /.../ (emphasis added).”

In earlier years this paragraph has begun by urging all countries etc. to “co-operate in the establishment of a NWICO” and from 1986 on, of “a NWICO, seen as a evolving and continuous process”. In 1989 all countries according to the corresponding paragraph were called upon to “/.../ co-operate and interact in responding to the call for the establishment of a new world information and communication order, seen as an evolving and continuous process /.../”.<sup>121</sup> It must also be pointed out that until and including the 1989 resolution on Questions relating to information, this paragraph in its different versions was operative and not preambular. In 1990 the first operative paragraph states that all coun-

<sup>120</sup> Ibid, operative para. (4).

<sup>121</sup> UN Gen. Ass. res. 44/50, of 8 December 1989, part I, operative para. (1).

tries should “[c]o-operate and interact with a view to reducing existing disparities in information flows at all levels /.../.” “At all levels” means the same as at the international as well as the national level.<sup>122</sup>

In the above quote from the preamble of the resolution of 1990,<sup>123</sup> the most important Western contributions in 1989 and 1990 to the formulation of this paragraph have been italicized. The “diversity of sources” and “free access to information” have long been part of this paragraph in its different versions. The reference to freedom of the press and freedom of information was added in 1989. The reference to the UN Charter, also inserted in 1989, may be a way of reformulating the earlier phrase saying that “the principle of sovereign equality among nations extends also to the field of information and communication”, a concept which has not appealed to the Western group.

The “independence, pluralism and diversity of the media” is a typical Western addition, inserted in 1989, which could be noticed also in the Third Medium-Term Plan of Unesco for 1990–1995 adopted in 1989.<sup>124</sup> “Disparities” is a less provocative euphemism for “imbalances” introduced in 1990. “Private, public and other media and individuals” is a typical Western formulation, inserted in 1990, intended to emphasize the importance also of private media and of individuals in the field of communication. The relationship between the media and the government and, on a more philosophical level, between the individual and the state, has obviously been one of the major subjects for dispute on the road to consensus on the NWICO issue. The “call in this context” means that the call for a NWICO is recognized only in the context of all the guarantees of individual freedoms which have been enumerated. Then the final “for *what /.../ has been termed* ‘a new world information and communication order, seen as an evolving and continuous process’” (emphasis added) definitely turns the NWICO issue into something of mere historic interest. It should be noted that the NWICO concept is put within quotation marks in the 1990 resolution. This is the only reference to a NWICO in the resolution and it could not possibly be more watered down without disappearing altogether.

<sup>122</sup> The latter expression was used in the preambular para. of the resolution of 1989. Cf. the emphasis as of late of Unesco on the free flow of information on both the international and the national level (see above pp 232–233).

<sup>123</sup> Cf. *supra* (n. 119).

<sup>124</sup> Cf. *supra* (n. 31).

Somewhat ironically, while arguing against the developing countries' NWICO proposals, the Western European countries themselves, in 1989, have concluded a treaty within the European Council on trans-frontier television aimed, *inter alia*, at promoting European programme production by guaranteeing that a majority of broadcast time is reserved for European works.<sup>125</sup> This is particularly evident in the corresponding EC Council Directive.<sup>126</sup> The desire of the European countries to protect their cultural identities against US domination is reminiscent of the similar desire on the part of the developing countries.<sup>127</sup> Protection of national cultures has been an important component of the NWICO proposals. It should be noted, however, that in the European television convention news is excluded from the category of programmes where European works shall be promoted, whereas news distribution has been at the centre of the NWICO debate. The US has reacted strongly also against the "protectionism" in Europe and has threatened to take action against it under the GATT.<sup>128</sup> It can be noted that the US uses economic arguments solely against the European Television Convention and the EC Council Directive, while the free flow of information argument was predominant against a NWICO.<sup>129</sup>

<sup>125</sup> European Convention on Transfrontier Television, see *supra* ch. 1.2.3 (n. 90), Article 10 "Cultural objectives".

<sup>126</sup> European Communities, Council Directive Concerning the Pursuit of Television Broadcasting Activities, see *supra* ch. 1.2.3 (n. 90), Articles 4–9 "Promotion of distribution and production of television programmes".

<sup>127</sup> Canada also in reality has a similar problem in relation to the US, cf. McPhail, "A new world information order?", *International Perspectives. The Canadian journal on world affairs*, May/June 1982, pp 19–20. There are of course economic motives behind the promotion of European programme production too.

<sup>128</sup> Concerning the Convention and the Directive and the US response, see Cate, *op. cit.* ch. 2.1 (n. 1), pp 402–420.

<sup>129</sup> *Ibid.*, p 407. "The First Amendment rhetoric has been replaced by economic parlance", writes Cate sarcastically.

# Summary and Conclusions

In the first part of this study the content of the articles on freedom of information in the existing international human rights agreements—including the Universal Declaration of Human Rights and the Helsinki Final Act—was analyzed. Several important principles are found in these articles. Firstly, it is the individual citizen and the mass media enterprises who are central to the freedom of information articles and the purpose of these articles is above all to protect individuals and media enterprises from interference by public authority. According to some, the protection of individual citizens against the results of excessive media concentrations may be considered a secondary purpose of these articles. This protection would then paradoxically be effectuated by way of interference in the activities of the mass media enterprises by the public authorities. It could be held, however, that the protection of the individual citizens'—or consumers'—freedom of information is the ultimate purpose of the rules even at the expense of the producers of information and ideas.<sup>1</sup>

Secondly, an important feature of the rules on freedom of information is the underlying belief in the pluralism of information and ideas. The European Commission and Court of Human Rights have emphasized many times that different kinds of ideas must be allowed to come to the fore including those that “offend, shock or disturb the State or any sector of the population”.<sup>2</sup> This is because all individual citizens shall have access to the greatest number of ideas possible to evaluate and from

<sup>1</sup> Cf. Eur. Comm. H.R., *De Geillustreerde Pers N.V. v. The Netherlands*, supra ch. 1.2.3, (n. 106).

<sup>2</sup> Cf. Eur. Court H.R., *Handyside case*, supra ch. 1.2.3, (n. 93).

which to choose. It is the purpose of freedom of information to stimulate information and debate on issues of public importance. The mass media play a crucial role in this respect and the European judiciary organs have expressly stated that it is the role of the mass media to critically watch those who hold public power.

Thirdly, the restrictions on freedom of information which are nevertheless allowed must be narrowly construed—freedom should be the rule and constraint the exception. Where restrictions are mandatory they should be implemented with due regard to the freedom of information. All states foresee restrictions on the freedom of information, nationally and internationally, the question is rather where the limits shall be drawn. Thus, the international controversies over freedom of information depend on differences of degree rather than of kind.

Fourthly, the restrictions on freedom of information should be applied with the demands of a democratic society in mind. Democracy here means a liberal multi-party democracy. The rules on freedom of information presume that society is democratically governed. Or, democracy is a prerequisite for freedom of information.

Fifthly, and importantly, freedom of information is exercised “regardless of frontiers”.

In the case of the African Charter on Human and Peoples’ Rights it is uncertain to what extent the above conclusions apply. Here freedom of information appears to be given less protection than in the other human rights instruments. On the other hand, the African Charter by virtue of its mere creation is placed within a particular human rights framework and although the wording differs from the other instruments it would not be unreasonable to presume that “freedom of information” means the same in the African Charter as it does in other human rights instruments. Moreover, African states may already be bound by the International Covenant on Civil and Political Rights and as members of the UN they are at least morally bound by the Universal Declaration of Human Rights. This also applies to the Asian states who do not have any regional agreement on human rights.

Because of lack of sufficient general practice up to the present time on the national level, the human right to freedom of information has not become a rule of customary international law.

Following the analysis of freedom of information under the existing human rights instruments it was shown that the states of the Third

World, supported by the former Soviet bloc, claimed that freedom and a free flow of information was no freedom or free flow at all for their part but only for the Western world. The Western world was seen as exerting cultural and information imperialism in the Third World in particular, by means of the big international news agencies. Not only did the domination of the Big Four, which no one really contests in itself, lead to more news being transmitted to the South about the North–West than vice versa. When the international news agencies did report on the Third World their reporting was seriously biased to the detriment of the development efforts of the Third World states. Most often only “coups and earthquakes” were reported. Either, it was argued, this reporting was unintentionally biased because of the reporters being Westerners, seeing things through Western eyes, or this reporting was intentionally biased with the conscious purpose of hindering the developing countries from developing.

In relation to the former Soviet bloc countries the hidden purpose of the Big Four’s reporting would be to spread political propaganda in order to destabilize the societies and lead to the overthrow of the Socialist system. The international news reporting, at that time, was not discussed as much in relation to the former Soviet bloc as in relation to the Third World, however, although the Soviet bloc in time supported the NWICO struggle whole-heartedly.

The remedy for the existing injustices would have been a NWICO. A great diversity of claims have in fact been presented under this heading which makes it difficult to pin-point what exactly a NWICO would constitute. The clearest legal expression ever given to these claims was the Unesco Mass Media Declaration of 1978 and resolution 4/19 of 1980, part VI.

There were two main trends in the claims for a NWICO, one normative and one practical. On the normative side, the demands for a NWICO included such elements as regulation of the contents of internationally distributed news in order to promote “peaceful international relations”, i.e. to counteract the biased reporting of the Western news agencies which was considered to damage the general international climate. Also, less negative, or more positive, reporting would promote the internal economic and social development within the developing countries and would supposedly not have destabilized the system of government of the Soviet bloc countries. The legal argument invoked in

favour of state control of news leaving and entering the Third World and former Soviet bloc countries was the state sovereignty argument, in a more refined form in this context also called the "information sovereignty" of every state.

On the normative side, further, was the idea that states should be made generally responsible for the content of internationally distributed news items. This in its turn would necessarily lead to state influence over international news reporting because if states were to be made responsible for the content of news they would want to be able to influence what was reported and how. Such governmental influence over the activities of the mass media would probably not promote critical reporting, in fact one is tempted to think that this may have been a reason why the Soviet bloc and the developing countries favoured far-reaching state responsibility for the activities of the media. It is doubtful also whether state influence over the mass media would promote pluralism of information and ideas.

It is true that interference on the national level by public authority in order to counteract media concentration and promote pluralism may be justified under the articles on freedom of information in the human rights agreements. It is the interest of the individual consumers in pluralist information and ideas which is central and it is the duty of the states to see to it that this interest is satisfied. On the international level, however, it is difficult to see how the counteracting of media concentration, through anti-trust legislation for instance, could be achieved especially as the main problem here from the point of the view of the developing countries is that the international news agencies are concentrated in the hands of Westerners. The solution to this problem would be to transfer ownership or control over parts of the news agencies to people from other parts of the world.

The normative aspects of a NWICO which were significant at the beginning of the debate were gradually toned down and eventually disappeared from the agenda of Unesco and the UN General Assembly.

On the practical side demands were made on the part of the Third World countries for assistance from the developed world to build up the communications infrastructures in the developing countries. For a long time, however, it was maintained that aid was not sufficient since the building up of communications infrastructures in the developing countries along Western lines did not change the fundamental faults which

the current news reporting. Therefore the normative changes were considered necessary too, but towards the end of the NWICO debate only the practical aspects of the NWICO demands remained. The IPDC is the practical result of the demands for a NWICO. The practical side of the NWICO demands was not controversial. Unesco has always worked with the development of communications infrastructures in Third World countries. The new and controversial element was the normative, ideological, side of the NWICO demands.

From a human rights standpoint it is difficult not to be sceptical about the normative elements of the demands for a NWICO. It cannot seriously be claimed that the Soviet bloc states favoured a NWICO for the benefit of the individual citizens of their own or of other states. It is probably significant that the support for the NWICO claims on the part of the Soviet bloc states ended when they changed their system of government in favour of democracy. Only the future can tell whether the apparent democratization in many Third World countries will have the same effect on their fundamental attitudes towards a NWICO. At the official level the developing countries have been more or less forced to retreat from the demands for a NWICO for the time being.

It is highly doubtful, furthermore, whether the Third World states have demanded a NWICO with the interests of their individual citizens in mind. Rather a NWICO with its originally intended content control and state responsibility would go diametrically against freedom of information as an individual human right. The right of the Third World *states* or *peoples* to freedom of information or a "right to communicate" in their capacity as states or peoples which has often been claimed in the NWICO debate is non-existent, as would be the right of any other states or peoples. Only individuals can claim the human right to freedom of information.

The state sovereignty argument invoked in order to support state control of incoming and outgoing news may seem potent since state sovereignty is one of the fundamental tenets of international law. However, state sovereignty, while still in a formal sense unaffected by international developments, has in reality become increasingly more hollow as human rights generally have become increasingly more important. In the field of information and communication the individual human right to freedom of information prevails over the right of the state to control or even block the international flow of news in the name of state sover-

eignty. Moreover, the concept of “information sovereignty” has never been generally accepted as part of the body of international law.

One argument which has often been used by the former Soviet bloc and the Third World countries is that the international activities of the mass media may constitute interference in the internal affairs of other states. However, the fact is that only in extreme cases of intense and aggressive propaganda aimed at overthrowing the government can activities of the mass media on the whole be regarded as amounting to unlawful intervention in the internal affairs of another state. Interference is a weaker form of involvement which is not prohibited under international law. Also the area of strictly internal affairs of states is constantly shrinking as a result of the conclusion of more and more international agreements in different fields. This applies for instance to the human rights situation which is no longer regarded as being exclusively of internal concern.

The developing states naturally have every right to build up news agencies of their own with or without assistance from the developed countries. The NANAP was an attempt to create a regional news exchange mechanism in the developing countries in order to encourage and facilitate the news traffic between the developing countries. There was also the hope that the developed countries would use news material from the NANAP which would balance the imbalanced news reporting about the Third World. More such co-operation between developing countries would no doubt further their cause for a better balanced international news flow.

The international political developments that have taken place in later years with the end of the Cold War and the rapprochement of the US and the Soviet Union—the new “new order”—has been one of the most important reasons for the phasing out of the demands for a NWICO. Without the support of the Soviet bloc the Third World countries although numerous have not the necessary strength to pursue their claims. The rapprochement of the superpowers or more directly the decline of the Communist ideology has also had another effect relevant to the legal side of the NWICO claims. The Soviet bloc countries professed a different conception of human rights than the Western countries, a conception which had many traits in common with the Third World view especially as regards the importance of the individual in relation to the community. Since the former Soviet bloc states have abandoned the

collectivist conception of human rights in favour of the individualist conception the latter has become correspondingly strengthened. It has become more difficult to maintain the collectivist non-liberal human rights conception today. The efforts through a NWICO to change the international law of freedom—and free flow—of information have been without result. Today, furthermore, fewer states would claim, as the former Soviet bloc states did until the end of the 1980s, that a controlled or censored international flow of information and ideas is more conducive to peace than a free flow.

The East–West détente of today can work either in favour of or against the interests of the Third World as regards the more practical aspects of a NWICO. On one hand the Third World countries may become generally less interesting for the superpowers to support now when they are no longer pawns in a global superpower contest. On the other hand the “ideological peace” and generally relaxed climate now reigning could make it easier for the Western countries, primarily, to agree to assist the developing countries because there are no longer any ideological deadlocks at least not in the form of liberalism vs. Communism. The North–South conflict will no doubt remain. The demands for change and/or aid in the future will not, however, be made in the name of a NWICO with all its ideological connotations. The term as such has practically disappeared from Unesco and UN General Assembly documents. Indeed, one could say that the NWICO debate encapsulates a particular era in international politics and the NWICO debate illustrates many of the issues characteristic of this era. This era started with the independence of most of the former colonies and ended in the years 1989–1990. The debate on freedom of information in pure East–West terms started immediately after World War II.

We have seen that the European states have themselves concluded a treaty on transfrontier television within the Council of Europe and that a corresponding directive has been adopted by the European Communities. These instruments promote European production of television programmes both for cultural and economic reasons. The wish of the European countries to protect their culture against the “cultural invasion” of the United States is to some degree reminiscent of the wish of the developing countries to do the same. The European countries do not, however, have the political objectives of the developing countries. Nothing stops the Non-Aligned countries from concluding similar trea-

ties among themselves. The Non-Aligned countries can also agree to import less from the United States and to produce more themselves and buy or exchange television programmes among themselves. There already exists a Non-Aligned Broadcasting Organization (BONAC). No objections can be raised against such arrangements from a human rights point of view as long as the free flow of information of information and ideas "regardless of frontiers" is not completely blocked because of domestic programme production, which is unlikely. From other points of view, however, objections will certainly be raised as we have seen in the European case.

At no point in time since the end of the Second World War has the international climate been more conducive to a convention on freedom of information, a project which did not succeed after the War. The main conflict of interests today would be between the North and the South. It is an open question whether the freedom of information nationally and internationally would benefit from an international convention. It would not do any harm, of course, but freedom of information already enjoys quite strong protection through the international human rights agreements. It is a wide and vague concept in these agreements, but maybe freedom of information benefits more from being largely undefined rather than being precisely defined and thereby narrowed down. The inherently political nature of freedom of information, moreover, makes it particularly difficult to define that freedom definitively. As the Swedish delegate pointed out at one of the debates on a convention on freedom of information in the beginning of the 1950s, the lack of freedom of information in many countries then as well as today can hardly be blamed on the lack of a convention and inversely, just as in many other instances of international law, a convention in itself would probably not immediately further the cause of freedom of information. What is needed is a more honest construction and more efficient implementation of the already existing rules.

# Appendix

Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War (Unesco Doc. No. 20 C/20 Rev., 28 November 1978)

## Preamble

### **The General Conference,**

*Recalling* that by virtue of its Constitution the purpose of Unesco is to 'contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms' (Art. I, 1), and that to realize this purpose the Organization will strive 'to promote the free flow of ideas by word and image' (Art. I, 2),

*Further recalling* that under the Constitution the Member States of Unesco 'believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives' (sixth preambular paragraph),

*Recalling* the purposes and principles of the United Nations, as specified in its Charter,

*Recalling* the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948 and particularly

Article 19 thereof, which provides that ‘everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’; and the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations in 1966, Article 19 of which proclaims the same principles and Article 20 of which condemns incitement to war, the advocacy of national, racial or religious hatred and any form of discrimination, hostility or violence.

*Recalling* Article 4 of the International Convention on the Elimination of all Forms of Racial Discrimination, adopted by the General Assembly of the United Nations in 1965, and the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted by the General Assembly of the United Nations in 1973, whereby the States acceding to these Conventions undertook to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination, and agreed to prevent any encouragement of the crime of apartheid and similar segregationist policies or their manifestations,

*Recalling* the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, adopted by the General Assembly of the United Nations in 1965,

*Recalling* the declarations and resolutions adopted by the various organs of the United Nations concerning the establishment of a new international economic order and the role Unesco is called upon to play in this respect,

*Recalling* the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference of Unesco in 1966,

*Recalling* Resolution 59(I) of the General Assembly of the United Nations, adopted in 1946 and declaring:

‘Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated;

.....  
Freedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent;  
.....

*Recalling* Resolution 110(II) of the General Assembly of the United Nations, adopted in 1947, condemning all forms of propaganda which are designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression,

*Recalling* resolution 127(II), also adopted by the General Assembly in 1947, which invites Member States to take measures, within the limits of constitutional procedures, to combat the diffusion of false or distorted reports likely to injure friendly relations between States, as well as the other resolutions of the General Assembly concerning the mass media and their contribution to strengthening peace, trust and friendly relations among States,

*Recalling* resolution 9.12 adopted by the General Conference of Unesco in 1968, reiterating Unesco's objective to help to eradicate colonialism and racialism, and resolution 12.1 adopted by the General Conference in 1976, which proclaims that colonialism, neo-colonialism and racialism in all its forms and manifestations are incompatible with the fundamental aims of Unesco,

*Recalling* resolution 4.301 adopted in 1970 by the General Conference of Unesco on the contribution of the information media to furthering international understanding and co-operation in the interests of peace and human welfare, and to countering propaganda on behalf of war, racialism, apartheid and hatred among nations, and *aware* of the fundamental contribution that mass media can make to the realization of these objectives,

*Recalling* the Declaration on Race and Racial Prejudice adopted by the General Conference of Unesco at its twentieth session,

*Conscious* of the complexity of the problems of information in modern society, of the diversity of solutions which have been offered to them, as evidenced in particular by the consideration given to them within Unesco, and of the legitimate desire of all parties concerned that their aspirations, points of view and cultural identity be taken into due consideration,

*Conscious* of the aspirations of the developing countries for the establishment of a new, more just and more effective world information and communication order,

*Proclaims* on this twenty-eighth day of November 1978 this Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the

## Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War.

### Article I

The strengthening of peace and international understanding, the promotion of human rights and the countering of racism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information. To this end, the mass media have a leading contribution to make. This contribution will be the more effective to the extent that the information reflects the different aspects of the subject dealt with.

### Article II

1. The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.

2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end, journalists must have freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of the public in the elaboration of information.

3. With a view to the strengthening of peace and international understanding, to promoting human rights and to countering racism, apartheid and incitement to war, the mass media throughout the world, by reason of their role, contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against colonialism, neo-colonialism, foreign occupation and all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories.

4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

### **Article III**

1. The mass media have an important contribution to make to the strengthening of peace and international understanding and in countering racialism, apartheid and incitement to war.

2. In countering aggressive war, racialism, apartheid and other violations of human rights which are *inter alia* spawned by prejudice and ignorance, the mass media, by disseminating information on the aims, aspirations, cultures and needs of all peoples, contribute to eliminate ignorance and misunderstanding between peoples, to make nationals of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all nations, all peoples and all individuals without distinction of race, sex, language, religion or nationality and to draw attention to the great evils which afflict humanity, such as poverty, malnutrition and diseases, thereby promoting the formulation by States of the policies best able to promote the reduction of international tension and the peaceful and equitable settlement of international disputes.

### **Article IV**

The mass media have an essential part to play in the education of young people in a spirit of peace, justice, freedom, mutual respect and understanding, in order to promote human rights, equality of rights as between all human beings and all nations, and economic and social progress. Equally, they have an important role to play in making known the views and aspirations of the younger generation.

### **Article V**

In order to respect freedom of opinion, expression and information and in order that information may reflect all points of view, it is important that the points of view presented by those who consider that the information published or disseminated about them has seriously prejudiced their effort to strengthen peace and international understanding, to promote human rights or to counter racialism, apartheid and incitement to war be disseminated.

### **Article VI**

For the establishment of a new equilibrium and greater reciprocity in the flow of information, which will be conducive to the institution of a

just and lasting peace and to the economic and political independence of the developing countries, it is necessary to correct the inequalities in the flow of information to and from developing countries, and between those countries. To this end, it is essential that their mass media should have conditions and resources enabling them to gain strength and expand, and to co-operate both among themselves and with the mass media in developed countries.

### **Article VII**

By disseminating more widely all of the information concerning the universally accepted objectives and principles which are the bases of the resolutions adopted by the different organs of the United Nations, the mass media contribute effectively to the strengthening of peace and international understanding, to the promotion of human rights, and to the establishment of a more just and equitable international economic order.

### **Article VIII**

Professional organizations, and people who participate in the professional training of journalists and other agents of the mass media and who assist them in performing their functions in a responsible manner should attach special importance to the principles of this Declaration when drawing up and ensuring application of their codes of ethics.

### **Article IX**

In the spirit of this Declaration, it is for the international community to contribute to the creation of the conditions for a free flow and wider and more balanced dissemination of information, and of the conditions for the protection, in the exercise of their functions, of journalists and other agents of the mass media. Unesco is well placed to make a valuable contribution in this respect.

### **Article X**

1. With due respect for constitutional provisions designed to guarantee freedom of information and for the applicable international instruments and agreements, it is indispensable to create and maintain throughout the world the conditions which make it possible for the organizations and persons professionally involved in the dissemination of information to achieve the objectives of this Declaration.

2. It is important that a free flow and wider and better balanced dissemination of information be encouraged.

3. To this end, it is necessary that States facilitate the procurement by the mass media in the developing countries of adequate conditions and resources enabling them to gain strength and expand, and that they support co-operation by the latter both among themselves and with the mass media in developed countries.

4. Similarly, on a basis of equality of rights, mutual advantage and respect for the diversity of the cultures which go to make up the common heritage of mankind, it is essential that bilateral and multilateral exchanges of information among all States, and in particular between those which have different economic and social systems, be encouraged and developed.

## **Article XI**

For this declaration to be fully effective it is necessary, with due respect for the legislative and administrative provisions and the other obligations of Member States, to guarantee the existence of favourable conditions for the operation of the mass media, in conformity with the provisions of the Universal Declaration of Human Rights and with the corresponding principles proclaimed in the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations in 1966.

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Freedom of information is a vital element of democracy. According to the UN General Assembly, it is the touchstone of all the freedoms to which the UN is consecrated. The human right to freedom of information consists of the freedom to seek, receive and impart information and ideas, through any media and regardless of frontiers. This book analyzes the import of freedom of information under various international legal instruments, universal and regional.

In the 1970s the Third World countries, supported by the Soviet bloc, began to question the prevailing information order. They wanted to replace it with a New World Information and Communication Order. The new order would entail increased state responsibility for the activities of the mass media and the imposition of international guidelines for media content. One result of the demands for a new information order was the Mass Media Declaration adopted by Unesco in 1978.

The debate on freedom of information took yet another turn in the 1980s. This book shows how the debate has evolved to date and answers the question how the demands for a New World Information and Communication Order have affected the existing international law in this field.

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