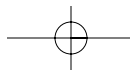
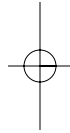
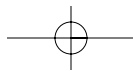
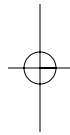
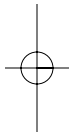




Everyone Has the Right





Everyone Has The Right

The Enduring Importance for a Free Press
of Article 19,
Universal Declaration of Human Rights

James H. Ottaway, Jr. • Leonard R. Sussman
Rosemary Righter • W. Michael Reisman/Ralph Wilde
Christopher Cviic • Cushrow Irani

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The World Press Freedom Committee, established in 1976, includes as affiliates 44 journalistic organizations on six continents and is dedicated to:

- News media free of government interference
- A full and free flow of news
- Practical assistance to media needing it

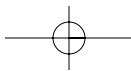
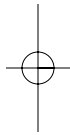
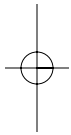
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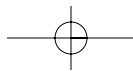
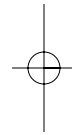
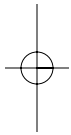
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Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 19
1948 Universal Declaration
of Human Rights



Introduction



By James H. Ottaway, Jr.

Since 1948 the Universal Declaration of Human Rights has been the most important, and the most effective, inspiration for personal, national and international efforts to secure and protect basic rights of mankind.

On the 50th anniversary of its adoption by the United Nations, this collection of essays by leaders in the ongoing struggle for press freedom and freedom of expression focuses on the enduring importance of Article 19 of the Declaration, which guarantees the related universal freedoms of opinion, speech and publication.

With its special meaning for freedom of the press, Article 19 has been called by some the “First Amendment of the World.” It says:

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.

The Meaning of Article 19’s Words

Let’s look at the full meaning and implication of every word in Article 19 of the Universal Declaration of Human Rights:

Everyone—This first word is radical because it empowers every person and commands every government in the world to enjoy and to

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enforce the following freedoms of expression. It is not qualified. It does not say “only in democracies.”

The word, “everyone,” is an important word because it does not limit freedoms of expression to government officials, news agencies, newspapers or universities, professors or experts. Everyone means every person living in any country no matter what its form of government. That was a radical, even revolutionary, idea in 1948 and it still is 50 years later!

Has the Right—This individual empowerment flows naturally from the Universal Declaration’s statement in Article 1 that “All human beings are born free and equal in dignity and rights.” Freedom of expression is a universal birth right, not a gift from a government or the United Nations. This idea comes from the American Revolution and its Declaration of Independence and the French Revolution with its Declaration of the Rights of Man.

Freedom of Opinion—The core operating language of Article 19. It covers freedom of thought and expression of opinion to one person or one million people, by any means, from public speech, letter to a newspaper editor, statement on television, or a fax letter from Tiananmen Square.

It is a basic human right not to be forced to agree with your family, your neighbors, your classmates, your professor, your fellow workers, your political party or your government. This guarantees freedom of personal and political opinion.

Freedom of Expression—This very broad language guarantees freedom of expression in any form—not only news reports or political protest, but also the much broader expression of thought and feeling through literature, all forms of fine art, theater, dance and music. These freedoms are often suppressed by authoritarian governments, powerful groups like religious organizations, or politically correct thinking.

Without Interference—“This right includes freedom to hold opinions without interference...” This important language forbids government or private party efforts to suppress free speech or artistic expression, which of course happens frequently, even in mature democracies like the United States.

To Seek, Receive—This language allows students, scholars, researchers and media reporters to ask questions, dig for information, open public government books and records to receive information important to free inquiry so vital to academic and free-press work.

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This is the basic right for any citizen to ask questions of authority and to receive honest, accurate answers.

To Impart Information and Ideas Through Any Media—This is the operative language which guarantees everyone a free press—meaning all forms of publication by newspaper, radio, television, cable, telephone, fax, satellite or World Wide Web on the Internet—free public expression without government or private power interference.

Regardless of Frontiers—This last phrase of Article 19 is very important in today's global media world. Many authoritarian governments, like Malaysia, which is calling for a rewriting of the Universal Declaration of Human Rights, are trying to control satellite broadcasting of news, unwanted entertainment programs and political ideas across their borders.

It is an isolationist policy that will be overwhelmed by the Internet and direct satellite broadcasting to tiny receiver dishes.

Essays Explore Article 19's Impact

The five essays in this collection explore key aspects of Article 19's origins, present importance and message for the future.

Leonard R. Sussman, senior scholar in international communications of Freedom House in New York, sets out the debates that led to Article 19's adoption in 1948 and analyzes how some would dilute its mandate for freedom.

Rosemary Righter, chief editorial writer of *The Times* of London, calls Article 19 the touchstone of all other freedoms. Not every ruler likes such unfettered freedom, however, and Ms. Righter cites some of the recurrent efforts to try to burden Article 19 with restrictions. One such effort has been the recent assertion that "Asian values" call for a more restrictive approach.

The legal history of Article 19 is presented by W. Michael Reisman and Ralph Wilde of Yale University. Step-by-step, they carefully trace how it came into being and what it is today.

Christopher Cviic, former Central and Eastern European correspondent for *The Economist* and founding editor of a Zagreb political weekly *Liednik*, tells what life was like during the Cold War years in countries where Article 19's freedoms were unknown—and why a free press is vital for the future there.

Cushrow Irani, editor-in-chief and managing director of *The Statesman* in India, in a concluding essay titled "Press Freedom IS a

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Universal Right,” rejects efforts to stifle news in the name of development or of any other asserted “national interest.” Urging those enjoying press freedom to rally around colleagues less fortunate, Irani reminds us that we all are our brothers’ keepers.

A Remarkable Achievement

Adoption of the Universal Declaration of Human Rights by the U.N. General Assembly was called “a remarkable achievement” because it was the first time in history that the governments of most nations agreed upon and declared as their public policy a statement of human rights and fundamental freedoms that should be enjoyed by all citizens of every nation in the world.

We all know the world is a long way from achieving the idealistic promise of universal human rights, but the Universal Declaration for 50 years has been the strongest statement of fundamental freedoms and human rights, a common standard against which all nations are measured for compliance or violation.

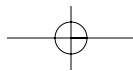
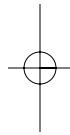
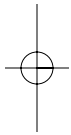
In this Information Age, no country can participate in the global debate of ideas, in global markets or the global economy without allowing news, information and new ideas to cross its borders. Freedom for ideas and information to travel everywhere is as essential to peace and economic progress for all nations, all people, today as it was 50 years ago.



James H. Ottaway, Jr., WPFC Chairman (right), and Leonard H. Marks, WPFC Treasurer (left), confer with U.N. Secretary General Kofi Annan on celebration of Article 19’s 50th anniversary.

ESSAYS

- **Leonard R. Sussman**
- **Rosemary Righter**
- **W. Michael Reisman
and Ralph Wilde**
- **Christopher Cviic**
- **Cushrow Irani**



Many Rulers Still Fear Full Freedom



By Leonard R. Sussman

Malaysian Prime Minister Mahathir Mohamad says the Universal Declaration of Human Rights should be rewritten to accommodate “Asian values,” not just Western ideas. Chief Justice Muhammad Haleem of Pakistan declares, however, that “the Universal Declaration is now widely acclaimed as a Magna Carta of humankind.” It is, says the chief justice, “established customary law.”

The Declaration, which has been accepted for 50 years by almost all members of the United Nations, includes Article 19. This would commit nations to provide everyone access to diverse domestic and international information—the key to press freedom worldwide. The prime minister would change that.

The late Eleanor Roosevelt would recognize Mahathir’s argument. Others voiced it fully while Mrs. Roosevelt, FDR’s First Lady, chaired the U.N. committee that produced the unequivocal Article 19. It is not as binding as a treaty but it expresses—precisely—the universal standard for the free flow of information. That standard was laboriously arbitrated over several years by representatives of all major geopolitical interests.

The declaration was adopted in 1948 by 48 votes, none against, and 8 abstentions. Approving were 32 developing countries in Asia, Africa and Latin America. These included predominantly Muslim as well as Christian nations. Abstaining were the Soviet Union and four satellites, plus Saudi Arabia, the Union of South Africa, and Yugoslavia. The

Leonard R. Sussman is senior scholar in International Communications of Freedom House, and adjunct professor of New York University.

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president of the U.N. General Assembly called the declaration a “remarkable achievement” that was “backed by the authority of the body of opinion of the United Nations as a whole and millions of people... all over the world who would turn to it for help, guidance and inspiration.”

Today, Malaysia is among the few states that have not signed onto the Universal Declaration of Human Rights and its Article 19. Indeed, Prime Minister Mahathir scoffs at “free flow” as another Western construct which needs changing. The “free marketplace of ideas,” he says, “can exist only in the realm of theory.” The media in the United States, “the haven of the libertarian model,” he adds, have “concentrated power in the hands of a select few.”

Some Reject Declaration’s Call

Mahathir does not regard the Malaysian print and broadcast media, strongly controlled by his party, as an undesirable concentration of power. “For [Malaysian] society precariously balanced on the razor’s edge, where one false or even one true word can lead to calamity, it is criminal irresponsibility to allow for that one word to be uttered,” Mahathir explains. Thus, while the individual has rights, so, too, does society, the prime minister says, adding, “I believe that it is a question of qualitatively and quantitatively balancing the two rights.”

Who would do the balancing?

“In a democratic state with a democratically elected government,” Mahathir responds, “it is the task of the democratically elected government.” Further, “When the press obviously abuses its rights, then democratic governments have the duty to put it right.”

How *fair* is an election, however, that harnesses the press while proclaiming that heavily flawed electoral procedures are “democratic”?

Mahathir is not the modern reformer he professes. His views hark back to the 19th century when states, not individuals, were the primary subjects in international law. Since World War II and the Nuremberg trials, individuals are held responsible for their actions under international law. That responsibility requires the individual’s access to diverse information, not only official handouts.

Mahathir hardens his position as he speaks: “The basic assumption that government must always be corrupt and evil is absolute and silly nonsense.” He agrees that power corrupts absolutely, but attributes such absolute corruption to the “powerful press.” He opposes the watchdog role of the press because government, after all, is the “enforcement authority.”

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I was in the room in Kuala Lumpur in 1986 when Mahathir made these pronouncements. Not long afterward, the prime minister strengthened the Official Secrets Act, revoked their licenses and thereby shut down four newspapers, and arrested more than 90 people under the Internal Security Act. Mahathir's view of the press has not softened in recent years. In 1994, Malaysia banned new industrial contracts to British companies—a costly loss to British entrepreneurs and employees—because the *Sunday Times* had alleged the offer of a \$50,000 bribe to Mahathir. When the economic crisis hit his country in 1997 he blamed not only journalists, but foreign speculators and “the Jews” who, he said, don't like Muslims.

Mahathir reflects only one version of Asian values. The 2,300-year-old Confucian system was, indeed, based on communitarianism, consensus-building. But it also required a leader to live up to his title, accept criticism, and reform his policy. Confucius's advice on serving the prince: “Tell him the truth, even if it offends him.” That is the role of a modern press watchdog, a social enforcer. Later, the Mo Tzu variation of Asian values thoroughly rejected the Confucian approach and vested all power in the elite. Mao Zedong, the communist leader, warmly accepted Mo Tzu's values. They were the ultimate distortion of a liberal Confucian consensus as was the Nazi-Fascist aberration of Western values. Mao, too, would probably reject Article 19 as inimical to his “Asian values.”

'Asian Values' Used to Excuse Restrictions

For 20 years, so-called Asian values have become political tools used to defend press controls by governments. In one country after another, ill-defined values are evoked to defer press freedom presumably until the political system is stable, the people better educated, or the economy highly developed. In some developing countries, 50 years have elapsed and the press is still shackled.

Meanwhile, legislation is devised, at least, to pull the teeth of the press watchdogs; at worst, to harass or physically assault the news media. Though the correlation was barely noticed in the West, the inevitable payback for such stringent press controls came to Asian countries in 1997. Their economies and monetary systems crashed. Banks failed. Brokerage houses collapsed under severe stock losses. National debts threatened national bankruptcy. Increasingly serious unemployment and social dislocations are forecast. In several countries the military warns against violence.

Why this devastating depression among the Asian “tigers”? Why—when barely a few months earlier—they were still hailed as the “Asian miracle”?

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The miracle was not in the positive role of Asian values applied to economics. The miracle was that corrupt scams, protected by government laws under the umbrella of press controls, lasted as long as they did.

Economic-protection laws are used to charge journalists with undermining the economy. Reporting corruption can earn the reporter, not the corrupter, a jail sentence. Journalists in most Asian countries—on pain of criminal indictment—cannot warn of potential financial dangers. Straight reporting of financial problems can be dangerous; still more dangerous, speculation on the reasonable likelihood of an economic downturn. Little room for honest journalistic mistakes.

In that climate favoring the elite, the big loser is the citizenry. In advance of a crisis, the public has inadequate information and therefore no opportunity to change financial procedures or the political leadership. There is a crucial lack of transparency which is essential for sound investment. Open reporting of financial news can reveal the quality and track record of management, and the problems and real potential of financial decision-making. In most Asian countries, these factors are routinely shielded from public view, and are largely unavailable to the research departments of foreign investors. Cronies and families of political leaders profit from inadequate journalism.

International lenders are not entirely blameless for providing billions of dollars of credit to Asian economies. Commercial bankers and the international monetary funds knew the hazards of placing vast sums, with inadequate collateral, into the hands of regimes and their chosen cronies. The lenders would probably hope, however, that judgment day would not arrive, or at least not in the lenders' business lifetimes. Meanwhile, absent transparency, the tigers could be touted as a miracle.

But it was a man-made miracle, contrived by laws designed to keep the investigative journalist at bay. The rewriting of Article 19 of the Universal Declaration of Human Rights would be merely the cap on the barrel of diverse press-control legislation already in place or being drafted.

43 Countries Drafting Restrictive Laws

A Freedom House study in 1997 revealed that legislators in 43 countries were proposing fresh legal constraints on the news media. Many drafts were ambiguous. Security laws could be used to prosecute journalists for violating vaguely defined state interests or values. Laws enforcing "responsible journalism" demand that reporting be based on truth—usually the version of truth set down by the finance minister or the

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minister of information. Laws against rumormongering can be applied to any subject the prosecutor deems—at that moment—a rumor. Such laws effectively defeat honest speculation or constructive analysis of complex developments that may correctly forecast serious consequences.

Some examples of new laws to rein in the press:

- In October 1997, the Parliament of Belarus debated proposed amendments to the country's press law. The amendments would increase the government's control over the news media. Publications and broadcasters could more easily be banned. Information flows into and out of the country would be severely restricted. The state press committee would wield power usually held by the courts. The lower house of parliament approved the amendments. In this climate, on November 25 the Minsk opposition newspaper *Svaboda (Freedom)* was shut down by a justice of the Supreme Commercial Court. *Svaboda* was an independent and very popular paper. The judge cancelled the paper's registration to publish. The action was based on alleged violations of the press law: by publishing reports of corruption, revealing the name of an extremist group, and supposedly inciting social unrest by covering a rally in Minsk. Banning of *Svaboda* reflects the use of the press law and other acts to advance the increasingly authoritarian regime of President Alyaksandr Lukashenka.

- A bill debated in the Brazilian legislature in October 1997 would provide no upper limit for financial penalties against publishing companies in a case of defamation. Another provision would allow for seizure of offending publications. An earlier version of the draft would make news media convicted of defamation liable for a fine of up to 10 percent of the annual revenue of the news organization. A draft would penalize journalists as well. They could receive sentences from 30 days to one year of community work for libel, slander or insult. Journalists could also be fined from \$2,000 to \$100,000. If community work is not carried out, prison sentences could be substituted. The debate over such penalties, whatever the outcome of legislation, has a chilling effect on reporters and editors.

- China's restrictions of the Internet close the window supposedly opened a crack by new communications technologies. The communist party still exercises pervasive control of the print and broadcast media. China's telecommunications minister proclaims that "as a sovereign state, China will exercise control of the information" entering the country from the Internet. Computer networks in China may use only international channels provided by the government—not the *The New York*

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Times, CNN or reports from Taiwan or Hong Kong. Internet information passes through two tightly controlled check points in Beijing and Shanghai. Censorship is easy.

Similar controls over the Internet are the subject of new legislation or administrative policies in Vietnam, Burma, Zimbabwe, Malawi, United Arab Emirates and neighboring Middle East countries.

- The writing of restrictive press laws in Colombia followed several years of violence and political turbulence. Investigative journalism increasingly revealed linkages between the Cali drug cartel and political leaders. As the revelations expanded, the murder of journalists increased. So, too, did political acts to remove legal protection from the broadcast media. The legislature suspended 12-year contracts awarded to television broadcasters. That forced news programs to bid afresh for broadcast slots they thought were guaranteed. The decisive members of the five-man board were three representatives of the president. On October 27, this commission awarded licenses to 10 programs but not to two of the most serious and investigative news programs.

- An amendment to the penal code of Ecuador, debated last September in Congress, provides for penalties ranging from 6 months to 2 years in prison for anyone who obtains, reproduces, or circulates images, recordings or texts which contain information that could damage the intimacy and personal lives of politicians, among others.

- In January 1998, Richard Choi, an American journalist visiting South Korea, served 18 days in prison for “rumor-mongering.” He had reported that a newspaper would merge. It did not. He then faced a trial that could net him five years in prison. Even analysis that is momentarily incorrect may alert the public to a sensitive matter that deserves attention. Restrictive laws, however, defeat such reporting, stifle initiative, and encourage self-censorship.

Worldwide, self-censorship is rampant. In many countries recently released from communist or other tyrannies, self-censorship is inspired because governments are writing laws to prevent the nascent news media from becoming true watchdogs. In some countries, self-censorship is generated by mafia-like assaults on journalists who investigate drug trafficking or political corruption. Legislation to rein in the press is a grand irony: The rule of law is used to harness the people’s surrogate in a society that claims to be democratic.

There is a rough correlation between the degree of transparency permitted the respective Asian publics and investors, and the opacity of the financial system under each country’s press-control legislation. South

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Korea has the freest democratic system outside of Japan and the Philippines. Yet Korea's government, in addition to velvet censorship such as restricting rumormongering, applies subtle financial pressures on editors and publishers. When the information ministry stopped daily telephoning to keep Korean editors in line, it required full financial disclosures of press holdings. These disclosures provide the threat of higher taxation or recouping of past unpaid taxes. That threat inevitably influences press coverage of crucial government interests. Yet the Korean press for a year covered the deteriorating economic condition with more candor than in the other tigers.

Indonesia, Malaysia and Singapore, with far more stringent press controls over financial and other matters, face a far deeper economic crisis. Indeed, in Indonesia, the overwhelming Suharto family and crony control of major financial institutions, and their vast holdings in the print and broadcast media as well, ensured that domestic and foreign capital was absorbed without adequate collateral or independent monitoring. In Thailand, where the press and the political structure are freer, the economic crisis is far less severe and reform is under way.

Major Debates Led to Declaration

The 50th anniversary in 1998 of the approval by the United Nations of the Universal Declaration of Human Rights and particularly its freedom-of-expression section, Article 19, is a special moment for Freedom House. I have spent some 31 years at that organization which was co-chaired in the late 1940s by Eleanor Roosevelt. At that time, she was also the American ambassador to the U.N. Human Rights Commission. In that role, Mrs. Roosevelt was the moving spirit behind the writing and eventual passage of the Human Rights Declaration and its Article 19.

With Mrs. Roosevelt in the chair, the human rights commission began its work in May 1946. Many issues were before the commission. Five separate proposals regarding press freedom were on the table: from the American Society of Newspaper Editors, the Associated Press, the United Press, and from Cuba and Panama. It soon became clear that even America's allies did not support an unregulated free-press position. Rene Cassin, France's delegate, urged the creation of an international organization "to regulate those who publish false information." He said that "national laws are no longer sufficient to govern the press, since the press itself is an international matter." The British delegate agreed there must be ways to "restrain irresponsible perversion of or suppression of the truth" in the press or on radio.

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In 1946, as at UNESCO in the bitter “information order” debates of the 1970s and 1980s, the idea that press freedom carried government-stipulated obligations violated basic American thinking. The U.S. delegate insisted that if such obligations were to remain in the text before the subcommittee then the body should also study existing obstacles to press freedom such as “censorship of press and radio, control of correspondence, discriminatory cable rates, powers (beneficial and otherwise) of press agencies, customs and laws of different countries, and similar topics.” Eleanor Roosevelt stood almost alone on the commission in emphasizing the rights of individuals to freedom of information, rather than pressing for duties and obligations that the privilege entailed.

Final Article 19 Text

After two years of wrangling, the Universal Declaration of Human Rights was approved. It included Article 19 in almost the form presented originally by the U.S. delegation. The approved text:

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

The declaration with Article 19 intact was approved in 1948. Drafting and debate continued intermittently in other U.N. venues on the subject of press freedom. On December 16, 1966 the U.N. approved the International Covenant on Civil and Political Rights. Its Article 19 begins with two paragraphs mainly taken from the 1948 Universal Declaration’s Article 19. But then the 1966 covenant adds:

“The exercise of the rights provided in paragraph 2 [mainly the 1948 text] of this article 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 respect of the rights and reputations of others; (b) for the protection of national security or of public order, or of public health or morals.”

In the same covenant, Article 20 provides that propaganda for war, or any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

The United States, under pressure from domestic human rights groups, in 1992 ratified the covenant prepared in 1966. At the urging of American press-freedom advocates, with the approval of the Senate, the U.S. appended certain reservations to the covenant. The U.S.

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expressed its concern about the restrictive sections of Articles 19 and 20. These sections, the U.S. said, are inconsistent with the guarantees of free speech and press in the U.S. Constitution and the Bill of Rights. The U.S., therefore, expressed its formal reservation on the limitation of rights set forth in the covenant. In supporting these reservations, the Senate formally declared that U.S. ratification of the covenant will allow the government “to help ensure that the limitations permitted under these articles are interpreted narrowly.”

These paragraphs modifying the unambiguous statement of the original Article 19 provide the juridical basis for many of the 43 legislatures which considered in 1996–7 a record number of press laws designed to inhibit journalists. Indeed, a 1997 study by the World Press Freedom Committee discovered that from 1992 to 1996 the European Convention’s version of the restrictive paragraphs in the international covenant were used “nearly 1,200 times in 109 countries to justify prosecution or jailing of journalists, closure of independent news media, or other actions to stifle unwanted news reports.” Said the WPFC: “A human rights text should focus on prescribing rights—not on providing detailed lists of how to restrict them.”

Mrs. Roosevelt had tried to mediate the diverse views in the press-freedom debate. She described briefly the two opposing principles: “Some people believe freedom of information implies that all kinds of information should be available and that the public can be relied on to sift the true from the false.” (This is the 16th century “self-righting” philosophy of John Milton, the first press-freedom activist.) Opposing this, said Mrs. Roosevelt, were those who believed that “some kinds of information are deliberately falsified and slanted to give the public an incorrect impression of the facts,” and advocates of that theory “believe that freedom of information implies some kind of control over propaganda for protection of those who cannot recognize it.”

Similar Issues Persist Today

Fifty years later—indeed 350 years after John Milton’s revolutionary plea for press freedom—the same debate persists. Today, too, America’s friends, the United Kingdom and others in Western Europe, are still seeking some way to legislate “press responsibility.” The term “permissible” restraint of the press, while appearing in the Council of Europe’s papers the past three years, was first voiced 50 years ago in the press-freedom debates in the United Nations.

Now, as then, however, the greatest support for press constraints comes from those nations which already control, censor or otherwise

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influence their news media; and do so proclaiming high principles of defending their culture or “values”—African, Latin American, not only Asian.

In January 1998, the Freedom House press-freedom survey revealed that only 20 percent of the world’s population lives in press-free countries. These are 67 of 186 nations. Another 54 nations with 38 percent of the world’s people have a partially free press. Fully 42 percent of the world population lives in 65 countries where the press is not free. The survey’s 20 criteria test the real independence of the news media from government control, the degree of economic as well as political pressures on the content of journalism, and the actual cases of press-freedom violations in the country.

Asia is among the regions with the highest percentage of countries in which the news media are not free. In Asia, journalists in 19 countries (53%) are not free, 12 (33%) partly free, and 5 (14%) free. In Europe, East and West, 4 countries (11%) have media that are not free, 5 (14%) partly free, and 27 (75%) free.

Exporting worldwide the First Amendment to the U.S. Constitution has never been a realistic option. Even in America, there have always been clear areas in which the press, as any citizen, is restricted. There is no unlimited right or absolute even in the freest society. Murder can be absolved by proving self-defense. An American journalist protecting a source cannot always be sustained if a court needs a reporter’s testimony to assist a defendant’s defense. Slander and libel are actionable. So is pornography. These are the relatively easily understood, though still litigious, limitations on press freedom.

The courts, in a free society, become the arbiter. International law may apply in domestic cases even in the absence of specific treaty commitments. The Universal Declaration of Human Rights, for example, reflects a definitive interpretation of the U.N. Charter and its clauses on human rights. The Charter is a treaty commitment. It is likely that Prime Minister Mahathir’s persistent objection to Article 19 and its press-freedom commitment is based on the principle that customary international law becomes a nation’s commitment if not formally rejected. A customary standard binds all nations, even those which have not formally recognized it by action or treaty, unless the norm is explicitly rejected.

The implication is clear. The present Malaysian government—and a number of others—fears the widening international acceptance of the commitment to human rights. Other developing countries with British colonial traditions have modeled their constitutions on the Universal

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Declaration or the European Convention. Some, such as Gambia, Nigeria and Singapore, write press freedom into their constitutions and then proceed to dishonor the commitment.

Malaysia acts differently. It would rewrite Article 19 presumably to justify restrictions already in place. Meanwhile, however, the somewhat independent Malaysian Supreme Court, in the British tradition, occasionally evokes the right to freedom of expression for citizens appealing a government action. The court in 1986 ruled against the government's restriction on speakers at an opposition party's event. The court held that forbidding speeches of a political nature violates the right to freedom of speech. A limited victory for freedom of the press and expression but sufficient, one assumes, for Mahathir's government to want to change the rules set forth in Article 19. Around the time of this court decision, the Prime Minister made his long, philosophic attack on press freedom, cited above.

Press-freedom norms, moreover, are increasingly tested by the concentration of ownership of the news media. This is an international as well as a domestic issue.

Effort to Revive NWICO Rejected

The decade-long debate in UNESCO over a "new information order" is being revived by Western academics and African information ministers. They maintain that the networking of networks using the newest electronic communication technologies is rapidly reducing the number and diversity of fingers on the news-flow switches. Today's major communication conglomerates, say the critics, control far more idea-distribution than the four Western news services did in the 1970s when the information-order debate targeted them as cultural imperialists.

African information ministers tried in 1997 to revive the information-order discussion at the U.N., but it was quickly rejected. UNESCO states formally that in 1989 it "defined and launched its new communications strategy, ending decades of contentious debate and rallying all under the universal belief in freedom of expression as formulated under Article 19 of the Universal Declaration of Human Rights." UNESCO has since convened historic press-freedom conferences in Africa, Asia, the Middle East, Latin America, and Europe, and annually sponsors World Press Freedom Day.

The "press-responsibility" issue, however, will not disappear. It is regularly examined at international academic conferences under the rubric of the MacBride Roundtable, brainchild of Kaarle Nordenstreng,

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former president of the International Organization of Journalists. Sean MacBride, the Irish politician, headed the UNESCO commission which examined communication problems in the 1970s. At the outset of the Cold War, the IOJ was created to represent the Eastern approach to the news media. Nordenstreng was the most prolific researcher and writer promoting information-order activism. When UNESCO's policy was reversed, defining the information-order debate merely as "history," Nordenstreng conceived the MacBride Roundtable to resume the debate among academics. He piggy-backed information-order discussions on the large international conferences in the field of communication. The ninth roundtable was held late in 1997 in Boulder, Colorado.

Several extensive papers reexamined the "information order" debate of the 1970s-1980s. One paper by a University of Colorado scholar concluded that in those years both the East and the West had "a crucial feature in common—censorship." The East, he said, employed the totalitarian system of Marxist-Leninism and Stalin. The West displayed "undeniably much greater sophistication," the author says, and used "market dynamics [which] push to the utmost the paradox between freedom and restraint without 'solving' it; their net results are (were) essentially the same."

Another paper asserted that "the concept of a 'marketplace of ideas' is fundamentally flawed, and the nature of the 'free flow of information' must be reconsidered." Freedom from government control is not sufficient, the writer continues, because there are also the influences of "market forces." She mentions the high cost of entering the media market and the influence of advertising on media content. In practice, she concludes, "in a communication system based on freedom from government regulation, but not freedom from economic interest, the ideals of a true free flow of information between nations and the democratization of communication...cannot be realized."

The participants in the MacBride Roundtable approved a concluding statement calling for "the creation of a global social movement." The movement would provide "alternatives to current homogenised and commodified media" while challenging "transnational institutions of corporate power and [their] dominion over world information"; this to open public media policy to "democratic participation." This message, it was said, must get to "natural allies in progressive movements and to the general public." A book will soon appear pooling studies of content analysis in order to create a system by which to monitor the performance of mainstream media, particularly on issues of global concern.

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Without accepting such analysis, it is clear that the latest visit to the information-order issue is far more complex than the earlier debate. There are, indeed, valid policy questions for citizens of information-rich as well as information-poor countries. Can the mergers of vast information-dispensing systems continue unrestrained? In even the freest countries, at what point will the clash of rights demand re-regulation by government? The clash: between the right of free enterprise to seek profitable realignments, set against the right of the individual citizen to have access to diverse views of his/her choice, and be able to express his/her views over existing channels?

Challenges of the Internet

Similar though still more complex dilemmas may be faced in the international arena. Even with the Internet's cornucopia of data, the information-poor countries are hard-pressed to afford the new technologies. Communication academics are already deeply involved in such discussions. Since many of these scholars were activists in the UNESCO debate they are easily regarded as reviving an old cause for what was then regarded by Western journalists and governments as having censorious objectives.

While some of their analysis does feed the still-censorious leaders in many developing countries, the basic dilemmas posed by the new technologies controlled by cross-border conglomerates are, indeed, real. High on the agenda for media owners, journalists, communication academics, and public-policymakers should be an earnest effort to make the worldwide networking of networks a boon for the coming 6 billion planetarians, not solely for the shareholders of a half-dozen conglomerates.

The widespread use of the Internet, faxes, and cross-border radio and television inevitably inspires new social and political debates over the use of these technologies and their impact on individuals and societies. The World Trade Organization and the International Telecommunications Union address the affects of these technologies on the WTO's and ITU's respective mandates. But these organizations are not likely to be concerned directly with the impact of the new technologies on national values and personal access to diverse sources of news and information.

The fundamental rights evoked by the Universal Declaration of Human Rights and particularly Article 19 should inspire a new proactive agenda of governments. They should pursue public policies that advance fair competition among the media, eliminate restrictions on foreign information flows, and assure universal service to all consumers without favoring one supplier.

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The technologies are new, but not the objectives: promote the free flow of information as widely as possible; support diversity in the news and cultural channels; and enable as widely as possible the interaction between sender and receiver of the information flows.

Such objectives may eventually demand the strongest political will: how to regulate the fairest *competitive* operation of economic democracy in the field of communication, without governmental interference in the *content* of the information flows?

The Touchstone Of All Other Freedom



By Rosemary Righter

Towards the end of 1997, Britain mourned the death of a Jewish scholar, born in Riga. His eloquent philosophical defense of pluralism and tolerance had profoundly enriched intellectual life in his adopted country for close to 70 years. One of Sir Isaiah Berlin's most telling essays, The Fox and the Hedgehog, re-examined for this century a parable first presented by an ancient Greek poet. The fox, Archilochus observed, knows many things, but the hedgehog knows one big thing. The contrast, as Berlin argues, is between the exploring pragmatist who is ready to investigate and weigh different and often conflicting possibilities, and the ideologue who insists on a single overarching truth. For much of human history, the hedgehog has held sway, with 'truth' operating as a tool of power. This always required controls over the spread of knowledge and exchange of ideas. As Lenin perfectly understood, knowledge is never more powerful than when it is controlled by the few.

* * *

It took a war of such global reach and wrenching barbarity that, in the words of the 1948 Universal Declaration of Human Rights, it "outraged the conscience of mankind" for governments from a multiplicity of cultural and historical backgrounds to acknowledge the right of

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every individual both to hold and to express opinions “without interference” and to exchange information “regardless of frontiers.”

In the Universal Declaration, and particularly in its Article 19, the State relinquished, as a matter of principle, great swathes of territory to the foxes. Practice was, and is, a different matter; it will never be possible to regard the battle for freedom of information as won; each generation will have to fight for it anew because in each generation, governments and vested interests will find reasons why their conduct should be shielded from scrutiny, and why dissent and opposition are not conducive to the ‘general good.’

But in the intervening 50 years a communications revolution, whose potential to liberate and enrich is still evolving, has assisted the foxes to make practical use of the freedom that Article 19 acknowledges. The pace and character of global exchanges of ideas and knowledge in all spheres, between academics, business, and the inquiring citizen, has speeded up beyond anything that could have been envisaged in 1948. It has widened horizons—and it has undoubtedly made life more difficult for governments because citizens are increasingly able to judge the performance of their rulers by comparing it with that of others.

Advances Defy Censor’s Pen

This access to information is still highly uneven and that to interactive channels of communications even more so. Nearly 90 per cent of the Internet’s users are still those whom E.M. Forster beguilingly described as ‘pinko-grey,’ the relatively affluent members of the industrialized world. But there is more to this revolution than the Net; there is a rapid convergence of different technologies, of desktop publishing, computers and satellites, the fax and the direct dial telephone. Even that brilliantly simple and surprisingly recent invention, the wind-up radio, hooks the African farmer more readily into this ‘world wide web.’ So in all its unevenness, this improving access to knowledge and skills, and the expanding capacity to exchange and compare information and ideas, defies as never before both distance and the censor’s pen.

The expansion of choices also challenges the pessimist’s fears of cultural homogenization. The greater the range of channels, the safer is pluralism. No guiding ideology can dominate a ‘global village’ where ideas are freely traded. So in all its relativity, the citizen’s growing capacity to select and compare makes it easier for all the freedoms recognized in the Universal Declaration to be, as its founders pledged, acknowledged as “a common standard of achievement.”

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It is because it is an indispensable vehicle for individuals to exercise vigilance in defense of all their basic human rights, and to make violations of them public, that Article 19, with its key concept of “without interference,” is the touchstone of all other freedoms. Yet this proposition has been, is, and will continue to be hotly contested, and not only by governments.

Article 19 has engendered more hostility, and more misunderstanding, than any other clause in the Declaration. Its protection embraces all forms of communication, the book, film and letter, the pamphlet, the placard, the academic world and the tramp at Speakers Corner—and the advertisement. But it is through the print and broadcast media—including, latterly, the Internet—that Article 19 most visibly operates in the public domain. The media are the routine daily link between government and governed, gathering and sifting news, giving space to conflicting opinions, monitoring the complex machinery of organized society and feeding back to politicians, business and bureaucrats that most elusive of things, the state of public opinion. The media entertain, too; they make us laugh; but their main task is to supply the rapid and accurate information that enables a freely informed democracy to function effectively.

Seek Facts, Spread Knowledge

This requires of journalists, in the solemn tones of a 1946 U.N. resolution, “as a basic discipline the obligation to seek the facts without prejudice and to spread knowledge without malicious intent.” They must operate within the law. But in most countries they also function within the marketplace, where they compete for sales, audience and, with the exception of some public service broadcasting, for advertising. And the twin pressures of competition and costs can not only tempt editors to cut back on news, particularly foreign news, that has little popular appeal; they can, as Tocqueville observed in 19th-century America, produce journalism that “disregards principles to seize on people, following them into their private lives and laying bare their weaknesses and vices.” Tocqueville’s distaste was qualified by his understanding that the mass-circulation press made “political life circulate in every corner of that vast land...forcing public figures in turn to appear before the tribunal of opinion.” But his ambivalence echoes down to the present; the quip in a Tom Stoppard play that “I’m all for the freedom of the press, it’s just newspapers that I can’t stand” captures a generalized and quite natural skepticism.

As a rough rule of thumb, the freer the society, the greater this public ambivalence. This is not only because these are the societies that have

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the 'luxury' of observing the lesser imperfections of freedom when the citizens of others have to live with the greater evil of government-imposed censorship. At least 60 Nigerian journalists are currently in prison for their refusal to be silenced by the corrupt and brutal Abacha dictatorship. So it is easier for Nigerians to see that their remarkably robust press is 'on their side,' than it is for people in secure democracies to understand that to curb the 'excesses' of the press could place in jeopardy freedoms they have, imprudently but understandably, become accustomed to take for granted. But the question, 'who will guard the guardians,' is a perennial of politics, whether it is put by authoritarian regimes determined to retain tight control over the levers of power, or by anxious voices deploring—as they do in each generation—the decline in public morality and ethical standards.

The short answer, that the highest responsibility of the press is to have the courage to exercise the freedoms that Article 19 underpins, is too readily misunderstood and dismissed, and not only by governments, as special pleading. Scrutiny of the media is healthy—in a climate of freedom; but laws designed to ensure a 'balance' between freedom and responsibility create destructive contradictions. Even in the most liberal democracy, where most people accept that a free press must inevitably be free, within the bounds of the law, to act irresponsibly, there is perennial tension.

The Backlash Against Article 19

Governments are congenitally reluctant to accept that the duty of the state begins and ends with the requirement not to infringe on freedom of information, subject to rigorously and narrowly defined safeguards for the protection of national security and to laws to protect the rights of individuals. Such safeguards should apply to the media as to all citizens, no more and no less. Early in the U.N.'s history, politicians and bureaucrats proved that they are incapable of discussing information without seeking to regulate it.

The great merit of Article 19 is that it is unqualified. But within a year of the adoption of the Universal Declaration, a subcommission of the U.N. Commission on Human Rights was requested by the U.N.'s Economic and Social Committee to study matters such as journalists' responsibilities, obligations and professional standards, and the 'problems' of the dissemination of information and of "false news." The U.S. and Britain succeeded in getting this subcommission dissolved, but this early and essentially Soviet-inspired effort was succeeded by the long, Kremlin-backed campaign by newly independent Third World govern-

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ments to assert the rights of states to “information sovereignty” and to set international norms regulating “the use of the mass media.”

In 1976, the Colombo summit of Non-Aligned nations formally demanded a “new world information and communication order” (NWICO). In part this was an attack on the domination of international news flows by Western-based media. Developing countries complained with some justification that these media reported their affairs poorly, sparsely and from ‘an alien perspective.’ But it rapidly evolved into an attack on the basic principle of the free flow of information. Abetted by UNESCO, the more radical of these governments were, by 1978, asserting the right to regulate “the collection, processing and transmission of news and data across frontiers”; the right of states “to rectify false or incomplete information appearing in foreign media”; and demanding the drawing up of criteria to ensure that news selection was “truly objective” and “regulation of the right to information by preventing abusive uses of the right of access to information.” Whatever the merits of the Third World case about imbalances in the flow of information around the world, the essence of this campaign was not to improve that flow, but to limit it.

Whose News?

At home, governments justified a ‘guided press’ in the name of nation-building. Meeting at Yaounde in 1980, African information ministers gave this policy a classic formulation: if the media were “systematically used to strengthen national unity, mobilize energies for development...and reinforce African solidarity...this will be a means of liberation and an expression of our peoples’ freedom.” This went beyond mere negative censorship, to require of the media active service to the state as *agitprops*. Nor were these doctrines confined to governments that held the rule of law in contempt. Across the world in Singapore, which to this day continues to penalize any foreign publication found to be “engaging in domestic politics,” ministers were and are frank that they “see freedom of the press not as the end but as means to an all-embracing end”—national independence, prosperity and “the eradication of anything that would sow seeds of social, racial and religious conflicts.”

In the ensuing ideological dispute through the 1970s and 1980s, heavily outvoted Western governments conducted an only partly successful strategy of damage-limitation against a communist-Third World alliance of convenience. The confrontation did more than tear UNESCO apart and contribute mightily to American disaffection with the

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United Nations as a whole. By claiming a spurious legitimacy for media regulation, the NWICO assisted the hobbling of efforts by democratic and human rights movements in Africa, Asia and Latin America to hold their governments to account. In the view of many Africans, in particular, it helped to shore up lords of misrule who had slipped into the shoes of the departed colonial powers.

Countermarch at UNESCO

The United Nations Educational, Scientific and Cultural Organization, which claimed that in abetting this campaign it was merely acting as the servant of its member states, proved the contrary when new management coincided with the beginning of the end of the Cold War. Beginning in 1989, the organization reversed course and has since then actively promoted the cause of independent, pluralistic media. It now presents, with some justice, its series of regional seminars for Central and Eastern Europe, Africa, Asia, Latin America, the Arab world and, lastly, the undivided Europe of 1997, as “milestones in UNESCO’s struggle for freedom of expression and the freedom of the press.” Tellingly, the chief architect of this new policy, Henrikas Yushkiavitchus, had a previous incarnation as the deputy chief of Soviet radio and television; the man can smell censorship at a thousand miles.

Given UNESCO’s changed stance, and the democratic instincts of Kofi Annan, the new U.N. secretary-general, the recent formal attempt by the Non-Aligned ministers of information to “reactivate” NWICO is unlikely, as such, to make much headway at the U.N. But that does not mean that the impulse to regulate the media is not capable of mutation.

Latin America is now overwhelmingly democratic; but that did not stop last year’s Ibero-American summit issuing a call to the media “to ensure that the contents of their messages are not vehicles for the transmission of negative values.” In Europe, the great and courageous progress towards viable and free media in the postcommunist democracies this decade has to be set against the storm tide in Western Europe, of all places, battering the ramparts of press freedom. The occasion this year of the 50th anniversary of the Universal Declaration seems likely to pose fresh, and serious, challenges to Article 19; and it is anything but clear how vigorously some Western European democracies will respond.

One of these challenges comes from the East, where Asian governments are once again mounting an assault on ‘Western’ freedoms in the name of Asian values and demanding revision of the Declaration to make it more representative of cultural diversity. From living and work-

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ing in the Far East, I have immense respect for the people of these highly disparate societies; but rather less fond memories of Asian values, as practiced by their élites. To start with, the concept is phony; there is as much or as little in common between Asian societies and Judeo-Christian ones as there is between Hinduism, Confucianism, Islam and the various kinds of Buddhism—all of which are 'Asian' value systems. In addition, like NWICO, 'Asian values' are a convenient tool for suppressing the inconvenient. It is 19 years since an embarrassed Indonesian diplomat explained that he could not give me a visa because the paper I then worked for had published two sentences. One sentence said that corruption was a problem in Indonesia. The next said that President Suharto and his family were heavily involved in business. "You see, Mrs. Righter," he said with great politeness, "our Asian values do not permit us to name names." Today, with the country in turmoil as a direct consequence of financial mismanagement and malpractice, Indonesians themselves are naming names, in anger.

An Insidious Threat

A more insidious threat, because it is more altruistic in appearance, more 'universal' in origin and chimes with the 'communitarian' *zeitgeist*, comes from a proposal to "complement" the human rights declaration with a "Universal Declaration of Human Responsibilities."

This document is issued by the Inter-Action Council, a club of former prime ministers and heads of state supported by the U.N. Development Program. It includes such internationally recognized voices from the past as Helmut Schmidt and Malcolm Fraser, who are its past and current chairmen, Valery Giscard d'Estaing, Jimmy Carter, Felipe Gonzalez, Pierre Trudeau, Kiichi Myazawa, Shimon Peres and Lord Callaghan.

They have signed a document that better fits the political profiles of two of their number, Kenneth Kaunda and Lee Kuan Yew. It was drafted for them, in 'U.N.-ready' format, by a German liberation theologian, Hans Kueng. Hence perhaps the articles on 'justice and solidarity,' including the 'responsibility' to use "all property and wealth...for the advancement of the human race," and to ensure that economic and political power are not "handled as an instrument of domination."

These articles could rekindle another destructively barren North-South confrontation of the 1970s, over a 'new international economic order.' Other articles set standards of responsibility in such purely personal matters as the conduct between "sexual partners" and the "love, loyalty and forgiveness" required in marriage. The draft's Article 14 is

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totally incompatible with Article 19 of the 1948 Declaration. It is worth quoting in full, emphasis added:

The freedom of the media to inform the public and to criticize institutions of society and governmental actions, which is essential for a just society, *must be used with responsibility and discretion*. Freedom of the media *carries a special responsibility for accurate and truthful reporting. Sensational reporting that degrades the human person or dignity must at all times be avoided*. (emphasis supplied)

How well such discretion would suit President Suharto in his current beleaguered state, not to mention the Marcoses and Mobutus, the fly-by-night businessmen or the corrupt functionaries, politicians and moguls exposed by Italy's 'Clean Hands' magistrates with the support of the media!

The final article of this draft declaration says that it should not be interpreted as implying any right to destroy "any of the responsibilities, rights and freedom [*sic—and note the order here*] set forth in this Declaration and in the Universal Declaration of Human Rights." To put it at its most polite, this is muddled thinking; why then introduce concepts that are clearly irreconcilable, as Article 19 and this document's Article 14 obviously are? In politics as in medicine, 'do no harm' is a sound starting point. The harm that this proposal could inflict is enormous.

With Friends Like This

Seasoned politicians who claim to be lifelong democrats should have known better than to sign a document that, by inviting governments to outlaw what, in their judgement, is 'indiscreet' and 'sensational' and to decide what constitutes truth, further arms the apparatus of power against the citizen. If they genuinely believe, as the covering introduction states, that by "balancing freedom with responsibility," it will be possible to reconcile "ideologies, beliefs and political views that were deemed antagonistic in the past," they have forgotten both the lessons of history and the logic of Milton's *Areopagitica*. If "everyone has the right to freedom of opinion and expression," that inescapably means the right to disagree—and the right to be wrong.

On the surface, the most surprising aspect of this thoroughly misguided venture might seem to be its mainly Western European inspiration. But that is less surprising than it seems. For Western European governments, while fully subscribing to the Universal Declaration, never

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the less have a history of introducing qualifications to Article 19 in their national policies and in regional conventions.

The most important of these was also the earliest. The 1950 European Convention on Human Rights is noble in ambition, sweeping in scope—and shot through with ambiguities. It was drawn up by the members of the newly established Council of Europe, with the admirable aim of ensuring that no European country could again violate basic human rights as Nazi Germany had done. It is binding on all signatories; and, unlike the U.N. Declaration, it is legally enforceable. If plaintiffs fail to obtain satisfaction in domestic courts, they can take alleged breaches of the convention by any “public authority” to the European Court of Human Rights in Strasbourg.

But, also unlike the U.N. Declaration, some of the rights it enunciates are hedged about with restrictions that—although Britain was heavily involved in drafting the convention, owe more to continental jurisprudence and concepts of the State than they do to the common law. The result is that a convention intended to enhance the freedoms of the citizen is open to interpretation in ways that restrict them instead.

Qualifying a Basic Right

This is particularly true of Article 10, which concerns the right “to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

The first paragraph of Article 10 broadly echoes the language of Article 19—with one qualification (covering the right of States to license not only broadcasting and television, but even cinemas); and one tiny but highly significant excision. From Article 19’s right “to seek, receive and impart information and ideas,” the European Convention omits the word “seek.” This cannot have been accidental; and the implication is that citizens are not to be encouraged to go hunting for information.

But the second paragraph is the all-important qualification of the rights asserted here. On the ground that the exercise of these freedoms “carries with it duties and responsibilities,” this paragraph permits “necessary” legal restrictions for an uncomfortably generalized set of reasons that include national security, the “prevention of disorder” or of the disclosure of information received in confidence, and the protection of health or morals. In addition, there is a conflict between Article 10 and Article 8 of the convention, which sets out, with similar caveats, the right to respect for privacy. The courts are put in the position of having to decide where to strike a balance.

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In Europe itself, although Article 8 may be about to pose a greater threat to freedom of information than it has so far, the European Court has generally taken a robust view of what restrictions are permissible in democratic societies. A celebrated 1975 judgement, the *Handyside* case, asserted firmly that freedom of information should apply to ideas or information “that offend, shock or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic’ society.” But it is a paradox that Europeans, who take pride in their championship of political liberties, should have framed a treaty that is considerably more restrictive of free expression than the U.N.’s already restrictive 1966 International Covenant on Civil and Political Rights. And outside Europe, governments have made extensive use of the types of restriction legitimized by the European Convention; a 1997 study by Dana Bullen and Rosalind Stark¹ listed 1,181 cases between 1992 and 1996 where governments used restrictions of the kind specified in the second part of Article 10 to prosecute or imprison journalists, close down or ban media or otherwise penalize the press.

Risk in Reaction to Tragedy

There was another British death in 1997, one that provoked more intensive international media coverage than any in modern memory—even than the assassination of John F. Kennedy. Yet it was not, in any conventional sense, a major player on the global stage who died. In the early hours of August 31, Diana, Princess of Wales, died in Paris in a car crash. It was a personal tragedy, and a tragedy for her family, but not an event that changed the world. Yet it could do so, if the hysterical reaction to the circumstances surrounding the fatal accident tightens already tough restrictions on reporting in the name of respect for privacy.

Diana was, in this respect, what lawyers call a hard case; she was the consummate media personality, who, aided by her beauty and royal position, ‘worked’ the press with all the skill of a magician, constantly initiating contact but careful rarely if ever to allow her hand to be seen in the resulting publicity. The media lionized her. And the media—in particular, the free-lance photographers who were trailing her that day as most days—were denounced in every corner of the world and from the pulpit at her funeral service in Westminster Abbey for almost literally hounding her to her death.

¹ *PERVERSE RESULT: How the European Convention on Human Rights supports global restrictions on press freedom*, World Press Freedom Committee.

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What matters here is not the precise circumstances, which have yet to be established. Nor should it be in question that respect for privacy, by which should be understood unwarranted intrusion into private life, is an important journalistic principle. But the question—who decides?—does not thereby go away. As UNESCO's Yushkiavitshus wisely observed a fortnight after the Princess's death, "It is also true that many famous people and many politicians would like to switch the press on when it is beneficial for them and switch it off when it is not...the press does not work like that." More pertinently still, he went on to say that for a free press to serve the public properly, "continued and vigilant discussion in newsrooms on the ethics of journalism is needed, but there is no need for new codes. These codes—and they are very good ones—already exist and have done so for a long time. They say 'seek and tell the truth. Be independent, minimize damage.'" Hard cases, as the lawyers say, make bad law; and across the Western world, bad law could be in the making as regulators grasp their window of opportunity.

A Rage to Codify

In the European Union, the European Parliament has asked the European Commission in Brussels to compare E.U. privacy laws with an eye to laying down a "media code of conduct"—precisely the sort of code that Western governments resisted at UNESCO in the Seventies and Eighties. Such pressures neglect the well-founded objection that privacy laws are almost impossible to frame without protecting those who do not merit protection, the unjust and the just alike. Laws of this kind are liable to be abused by those with money and lawyers and something to hide. The calls for more and stricter laws also ignore the fact that the toughest privacy law in Europe, that of France, had no impact in the case that has given rise to these demands. Even in the U.S., where the First Amendment affords protection to freedom of information that should be the envy of the world, congressmen have demanded legislation to protect those in the public eye from 'harassment.'

In Britain itself, not only has the independent Press Complaints Commission hastened to toughen the code voluntarily observed by newspapers, which already operate within a formidable framework of legal restrictions governing trespass, confidence, copyright, protection from harassment and famously fierce libel laws. The PCC has come under renewed public and parliamentary pressure just when it was fighting a vitally important battle to prevent the new Labor Government's decision to incorporate the European Convention into British law from creating, by the back door, a common law right to privacy.

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Britain is one of the few countries in which self-regulation by the media, through a voluntary code of practice policed by the PCC'S mixed committee of editors and laypersons, has opened up a reasonably effective avenue for people who cannot afford lawyers and feel the media has treated them unfairly, without stifling freedom of information. This system of conciliation outside the law could not work if the PCC were to be declared a "public authority" within the meaning of the European convention, because its decisions would then be subject to scrutiny by the courts. To make the PCC an official body would amount to public regulation of the press. It would simply not any more be voluntary self-restraint. And this would be against the public interest, since editors would be reluctant to concede errors if this could weaken their case in subsequent court cases. The system would collapse.

The 'Diana factor' could have an equally malign effect in another area where Europe—in this case the European Union—is setting a rotten legal precedent. The E.U.'s Data Protection Directive of 1995, intended to protect individual privacy by restricting the uses to which personal data banks can be put, risks creating a blanket law of press censorship. Under this directive, which E.U. governments are obliged to place on national statute books by October 1998, governments and other data users are obliged to obtain the "unambiguous" assent of individuals to hold or use paper or computer records concerning them. Where people have not themselves supplied the information, they must be told of its existence and will have the right to see, correct or block its disclosure or use. There is a total ban on collecting such "special categories" of information as somebody's political or religious beliefs, ethnic origins or sex life without their "explicit consent."

People do quite reasonably worry that information about them can be circulated without their consent to credit agencies or potential employers, just as they object to the nuisance of being bombarded with unsolicited sales pitches because a company has had access to a data bank. But this directive could have such grave unintended consequences for the free flow of news that, in the words of Lord Wakeham, the chairman of the Press Complaints Commission, it could simply "destroy journalism." Exemptions for journalism or literature are permitted only so far as these are "necessary to reconcile the right to privacy with the rules governing freedom of expression"; once again, this is privacy law by a side-entrance.

Each E.U. government must translate the E.U. directive into national law. Unless they create a blanket exception for the media, this E.U. directive would require reporters to tell persons that they were being

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investigated and obtain their consent to collecting the facts; and to notify them of their right to see what information was already held about them, which would destroy the confidentiality of sources. That person could then obtain a legal injunction blocking the publication of the material—which would amount to prior censorship. Investigative journalism would become impossible. And even the uncontroversial compiling of obituaries could fall foul of the clause prohibiting the collection of information on opinions, beliefs and origins. In Britain, ministers were disposed to sympathize with the case for a general exemption for the media—until the death of the Princess. Thereafter, they were more worried about courting unpopularity by seeming in any way to be ‘soft on the press.’

New Testing Grounds for Freedom

In an article whose purpose is to stress the clear, unqualified nature of Article 19 and the clear, unqualified need to see this crucial human right better implemented, it may seem perverse to devote much space to countries where the media, for all the current controversies, are far freer than they are in many societies. There are two reasons.

One is that in countering attacks on freedom of information, the devil is in the detail, and vigilance is necessary in the freest of environments because censorship can take routes far more devious than brutalist dictators consider necessary to pursue. What appears to be legalistic detail may diminish freedoms for an entire nation—and give heart to censors everywhere. The second is that if the world is to acknowledge Article 19 as “a common standard of achievement” and treat the Universal Declaration increasingly as part of global customary law, it is vital that governments which have been standard-bearers for universal rights do not retreat from the goal. Their every nod to censorship, direct or indirect, will be exploited by repressive regimes.

The case of the E.U.’s data protection directive is instructive as a portent. Nervousness about new technologies—nervousness, that is, about the ability of governments to control them—will create the coming century’s new testing grounds for freedom. It is vital to keep steadily in view that technology can never be more than a medium for human creativity, that the closed mind can wield a pen, the courageous can use a computer, and vice versa.

In stable democracies, journalists need to keep this in mind, for fear is not a product solely of dictatorship. Fear of offending, of losing a ‘good source,’ corporate ambition or just the simple desire to get into print by feeding an editor the stories that are bound to ‘make the page’ rather

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than news that is important but less eye-catching—all these venal betrayals go against the spirit of Article 19. The powers that be may not only be governments; they may also be media proprietors who have political or commercial fish to fry. Journalists also need to be more vigilant in defending press freedom as an indivisible whole—because in doing so, they defend all freedom.

The courage of journalists in Algeria, or Cameroon, or Cambodia, or Chechnya—who constantly risk assassination and imprisonment and who might consider privacy laws a trivial a form of harassment—is too little brought to public knowledge and concern by foreign colleagues.

In these battles, communications technologies are an asset because they are simplifying and lowering the costs of exchanging information worldwide. They are also, contrary to concerns about a globalized monoculture, making possible a massive increase in national cultural output in countries which were over-dependent 20 years ago on buying in relatively inexpensive Western programs. It would be hard to overstate the role of easier access to direct-dial telephones, e-mail and the fax machine in expanding individual freedoms. Governments that accept the necessary challenge of economic modernization are now forced into the information age and as they enter it, are less able to control what people learn, and what they tell each other. That was decisive in the Soviet Union; it will one day be decisive in China too.

Untrammled, communication sets people free. At the time when it was drafted 50 years ago, Article 19 was both a statement of principle and a pledge. In the information age of today and tomorrow, that pledge *will* be redeemed. The question is only how to speed the process; but to find the answers and to put them into practice will require, as it always has since the fabled killing of the first messenger, clear-headedness, persistence and courage.

The Sea Change From Caution To Openness

By *W. Michael Reisman*
and *Ralph Wilde*



For lawyers, the term 'legal history' means the transcribed record of the parliamentary and documentary steps that lead to the creation of a legal instrument.

Such a study of the legal history of an instrument or a single provision within it is important for the subsequent application of that instrument. The legal approach does not, however, locate the genesis of a document in larger social and political history. That is particularly unfortunate with respect to the remarkable emergence of Article 19 of the Universal Declaration of Human Rights, which establishes at the international level the essential paradigm regime of freedom of expression for all domestic politics.

An understanding of the social genesis of this remarkable initiative is particularly useful in approaching the continuing resistance to full application of Article 19, as well as for facilitating the shaping of

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appropriate strategies for the expansion of a genuine international regime of free expression.

The Social Background

The foundation human rights documents are driven by certain postulates and, as a result, can be called a coherent and organized philosophical system. The fundamental postulate of Article 19 is the Enlightenment notion that the process of finding truth is secular, trans-cultural and dialectical. This cultural perception has roots in the trauma of the Reformation. The break-up of a single Christian dogma in Europe and the fact that there is a single authoritative text, but it is susceptible to many interpretations, each as valid as any other, was an ultimate compromise. It is basic, at a deep cultural level, to the tolerance which underlies freedom of expression, with all of its unruliness, the offensive things, that may be said and that may injure egos, personalities and reputations.

The Enlightenment conception holds that there is not a single truth; but social truths emerge from a kind of conflict, an exchange of ideas and (often) exaggerated statements that are corrected by others, followed by new exaggerated statements, new syntheses and so on. All of these become part of our consciousness, reinforcing the idea of the relativity of truth that is basic to a vital system of freedom of expression. The extraordinary difference of world view and inner world of those who are participating in the system is accepted and it is appreciated that what will ultimately be installed as a social truth will be the result of give and take, a process in which many extreme, even preposterous views will be put forward, challenged, adapted, synthesized and then challenged again. In the process, those who participated will be shaped by it, as will their very sense of reality. If one starts with an absolute conception of truth that holds that the truth has been given at some point in the past, then one's job is as its custodian, to make sure that it is in no way tainted. If one starts with the notion that there is some scientific basis to social fact, then the notion of freedom of expression and its dialectical process of social truth will seem absurd. Thus, for Marxists, freedom of expression was simply a bourgeois atavism.

Inter-War Precursors

The international focus on domestic regimes of expression in Article 19 had precursors in international law. A number of earlier bilateral and multilateral treaties, conventions, charters and U.N. agreements framed policies about some aspects of expression. In the inter-war period, international instruments that were primarily concerned with

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maintaining good relations between states obliged parties to restrict that domestic expression which could endanger friendly relations. In the 1924 *USSR/UK General Treaty*¹ parties agreed

to restrain all persons and organizations under their direct or indirect control...from any act overt or covert liable in any way whatsoever to endanger the tranquility or prosperity [of the parties]...or intended to embitter the relations of the [parties]... with their neighbors or any other countries.

The 1936 *Broadcasting Convention*,² which was aimed specifically at broadcasters,³ contained similar provisions with enforcement through arbitration and conciliation under the League of Nations. Though it was the most focused and systematic of these efforts, participation and subscription were limited. The United States did not even participate in the conference. The U.S.S.R. signed the Convention but did not ratify it.

The demise of the League of Nations and the outbreak of war put an end to international proposals to authorize and require restricted expression at the domestic level ostensibly to reduce inter-state friction and maintain peace. Subsequent, post-war international agreements reversed course and endorsed an approach that would find its purest formulation in Article 19. President Roosevelt's State of the Union address in 1941 established the primacy and centrality of freedom of expression in the United Nations' (as the Allies called themselves) vision of the post-war global public order:

In the future days which we seek to make secure, we look forward to a world founded upon four essential freedoms. The first is freedom of speech and expression—everywhere in the world.⁴

This was a true paradigmatic shift in international law and politics. The earlier approach to expression had assumed that a domestic regime of free expression could vex and even jeopardize international peace; hence it had to be restricted for *international* reasons. The new paradigm assumed that the threat to international peace was precisely from states in which freedom of expression was restricted. Hence the international interest in protecting and enhancing freedom of expression.

The recurrence of this radically new approach in so many international instruments during the short period between the end of the war and the Universal Declaration in 1948 shows the momentum that was building behind it. In the *Treaty of Friendship, Commerce and Navigation* of 1948, Italy and the United States declared⁵ "their adherence to the principles of freedom of the press and of free exchange of infor-

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mation,” spelling out the rights for the media that this entailed.⁶ The Statute of the Netherlands-Indonesian Union,⁷ China’s amity treaties,⁸ and the Cultural Treaty of the Arab League⁹ all provide for freedom of expression. Firm commitments to maintain regimes of freedom of expression within the defeated states were integral parts of two of the basic international legal instruments that fashioned and implemented the peace: the Paris Peace Treaties between the Allies and the defeated powers,¹⁰ and the U.N. General Assembly Trusteeship Arrangements of 1946 and 1947.¹¹ Most dramatically, the very first human rights human rights declaration, the *American Declaration of the Rights and Duties of Man*¹² formulated the unqualified nature of the new conception of freedom of expression in the clearest terms. Article 4 provided:

“Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.”

The United Nations Background

The U.N. Charter¹³ affirms the obligation of members to respect human rights in general and to work jointly and severally for their protection,¹⁴ but it does not contain specific provisions on any human rights and no mention is made of freedom of expression. However, the primacy of freedom of expression to any human rights regime was identified by the Preparatory Commission of the United Nations. In mandating the Commission on Human Rights to draft what would become the Universal Declaration of Human Rights, the Preparatory Commission cited “freedom of information” as one of three examples for its content.¹⁵ At the outset of the very first session of the General Assembly, Ambassador General Carlos Romulo of the Philippines, himself the head of a chain of newspapers, proposed a resolution to convene an international conference on the freedom of the press and other media such as cinema and radio.¹⁶ Resolution 59 (1), which set up this conference, connected the concept of unlimited freedom of expression with the essential conception of post-war world order that was at the very foundation of the U.N.:

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 implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious effort to promote peace and progress of the world;

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Understanding and co-operation among nations are impossible without an alert and sound world opinion which, in turn, is wholly dependent upon freedom of information;¹⁷

In addition to its mandate to draft articles on free expression for the Universal Declaration and the Covenant on Human Rights,¹⁸ the conference was given the task of drafting three international conventions on different aspects of a free expression regime: the Gathering and International Transmission of News; Freedom of Information; and the Institution of an International Right of Correction. Although only the latter convention is currently in force, the institution of a major international conference with such an ambitious legislative agenda even before the signing of the Universal Declaration illustrates the extent to which an internationally established and protected freedom of expression regime within states had become a fundamental structural feature of national priorities

The Legislative History of Article 19

The Universal Declaration of Human Rights was passed as a Resolution of the General Assembly (GA). The document that was submitted to the Assembly had been prepared by the Drafting Committee, a subset of the Human Rights Commission which came under the aegis of the Economic and Social Council (ECOSOC). The Sub-Commission on the Freedom of Information and the Press¹⁹ also deliberated on the issue,²⁰ but most of the key discussions and decisions were conducted by the Drafting Committee.²¹

The Drafting Committee was an extremely small body, comprised of only 8 members.²² It was dominated by its chairman, Eleanor Roosevelt.²³ The main blueprint for the Declaration, the so-called "Secretariat Outline,"²⁴ had been drawn up for the Drafting Committee by John Humphrey of the Secretariat and then redrafted by the French member and distinguished scholar René Cassin.²⁵ At the time, Humphrey and others stated that there was no particular jurisprudential basis for the Declaration; the official version was that it was a random synthesis of proposals from all around the world that had been sent to the Secretariat.²⁶ Humphrey subsequently acknowledged that this was not actually the case:

With two exceptions all these texts came from English-speaking sources and all of them from the democratic West²⁷... My draft attempted to combine humanitarian liberalism with social democracy...I had myself decided what to put in and what to leave out...²⁸

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Although the Secretariat later cited extracts from the constitutions of a wider group of countries, this was done to support their formulation and to foster an impression of a universal consensus in anticipation of the debates that would take place in ECOSOC and the General Assembly. But, atmospherics apart, the inspiration and conception of the freedom of expression regime derived from Enlightenment philosophy and the crucible of experience of the North American, European and Commonwealth members of the Drafting Committee

This philosophical tradition animated the efforts to formulate an essentially unlimited regime of freedom of expression. Repeated attempts, from moderates and radicals, to include a more restrictive model were all blocked by Eleanor Roosevelt in Committee and opposed in debates in the Assembly by Ambassador Romulo, a powerful floor leader who was to go on to be President of the General Assembly. Attempts began when René Cassin drafted an article which included a reference to the duties of editors and printers,

But...Mrs. Roosevelt...said that her government could not accept the reference to editors and printers...The American position was...that a good press will compensate for a bad one; remove all restrictions and the public will be served.²⁹

Ideological battles over the scope of the freedom of expression regime dominated negotiations, but there were other disagreements. For example, the notion of freedom of *conscience* was not in the original 'Secretariat Outline.' Humphrey reports that it was introduced during the second meeting of the Sub-Commission of Freedom of Information and the Press³⁰ by Professor Chafee, the U.S. representative, who was concerned about the U.S. government actions during the McCarthy-era Congressional testimonies.³¹ This difference was ultimately 'papered over', and "opinion" was adopted as a compromise between those proposing freedom of "thought"³² to address such concerns, and those who felt there should be no provision on conscience whatsoever. There were also disagreements about the role of inquiry in the freedom of expression regime. Despite the more specific right to freedom of *investigation* in the *American Declaration*³³ and a Saudi Arabian proposal³⁴ of a right to *gather* information, the broader notion of the right to *seek* information prevailed at the Conference.

The Soviets and their allies challenged the libertarian model of freedom of expression in nearly every forum it was discussed. In the second session of the General Assembly, for example, attempts were made to introduce two resolutions that hearkened back to the inter-war para-

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digm. One addressed “propaganda and the inciters of a new war,”³⁵ the other “the dissemination of slanderous statements which are harmful to good relations between States.”³⁶ Both initiatives were blocked and two resolutions³⁷ restored the libertarian model of Resolution 59(1). As face-saving concessions, one of the latter resolutions suggested that states should

“study such measures as might...be taken...to combat...the diffusion of false or distorted reports likely to injure friendly relations between States,”

and the issue was remitted to other fora for further discussion. At the Conference on Freedom of Information and the Press in the spring of 1948,³⁸ the battle between unlimited and restrictionist notions of freedom of expression continued:

“The atmosphere at the conference was highly political, the committee rooms becoming arenas for fighting the Cold War which (after the Prague coup d’état) had become more intense. Positions hardened and there was very little room left for compromise. As so often happens at the United Nations, it was a dialogue between the deaf.”³⁹

This conflict pitted an unlimited freedom of expression regime against one which incorporated censorship and a state-run media; a free-flow versus regulated-flow freedom of information. A typical Soviet proposal for the free expression article stated

“The use of freedom of speech and of the Press for the purposes of propagating facism and aggression or of inciting to war between nations shall not be tolerated....In order to ensure the right of the free expression of opinion for large sections of the peoples and for their organizations, State assistance and co-operation shall be given in providing the material resources (premises, printing presses, paper, and the like) necessary for the publication of democratic organs of the Press.”⁴⁰

This ideological conflict figured prominently in all of the debates up to and including the adoption of the Universal Declaration,⁴¹ and effectively dashed the prospects for more elaborated free press regimes in specific conventions. But the freedom of expression regime in Article 19 itself remained unaffected, and prevailed over repeated discussions and amendment proposals.⁴² In the plenary session of the General Assembly, the Soviet amendments were rejected without discussion at the insis-

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tence of Eleanor Roosevelt.⁴³ The Declaration was adopted on 10 December 1948 with 48 votes in favor, none against, and 8 abstentions. Article 20, which became Article 19, was adopted by 44 votes to 7, with 2 abstentions.⁴⁴

Conclusion

Insofar as freedom of expression is a dialectical process, there can be no prohibitions on it. If what can be said is limited, the minds of those who might otherwise be stimulated to reflect on different aspects of a larger reality are stunted. John Stewart Mill, who shaped the English notion of freedom of expression which is the philosophical basis for the dialectical model in Article 19, stated that limitations on speech affect not only those who are silenced, but society as a whole:

'It is not the minds of the heretics that are deteriorated most by the ban on free speech, the greatest harm is done to those who are not heretics and whose whole mental development is cramped and their reason caught by the fear of heresy. No man can be a great thinker who does not recognize that as a thinker it is his first duty to follow his intellect to whatever conclusion it may lead. Truth gains more even by the errors of one who would do study and preparations, thinks for himself than by the true opinion of those who hold them only because they do not suffer themselves to think.'

A free and untrammelled system of free expression, that is designed to enrich the community and to enrich each participant who is engaged in it, has costs: outrageous statements that injure people's feelings, that challenge their world views, that challenge fundamentalist struts of their own personalities, and that, as a result, lead them to resist, and in some cases to try to stifle the freedom of expression itself. No one should want to minimise the 'transaction' costs of freedom of expression: satire, insult, prodding sacred cows, challenging the most fundamental postulates of their inner lives.

The costs of the freedom of expression system in injuries to honor, to ego, and of course the reputations of government officials who would just as soon operate behind a cloak of anonymity, will always generate resistance. There will always be an ongoing tension between a human rights movement that is committed to a secular conception of social truth and a system of freedom of expression, and governments trying, in varying degrees, to control that freedom so that it does not undermine the conception and practices of public order, espoused by them and their constituents.

Notes

¹ Signed in 1924 and renewed in an exchange of notes in 1929, British Parliamentary Papers, Treaty Series No.2 (1930) Cmd. 3467.

² The *International Convention Concerning the Use of Broadcasting in the Cause of Peace* adopted in Geneva, 23 Sep. 1936; entered into force 2 Apr. 1938, CLXXXVI LEAGUE OF NATIONS, TREATY SERIES 30. See also U.N. Doc. E/CN.4/Sub.1/104. Parties to the Convention were Australia, Brazil, Burma, Chile, Denmark, Egypt, El Salvador, Finland, France, India, Ireland, Luxembourg, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the Union of South Africa, and the U.K. See HILDING EEK, FREEDOM OF INFORMATION AS A PROJECT OF INTERNATIONAL LEGISLATION; A STUDY OF INTERNATIONAL LAW IN THE MAKING (Uppsala, A.-B. Lundequistska Bokhandeln, 1953) 130.

³ "to prohibit the broadcasting of transmissions of such a character as to incite to acts incompatible with the international order or the security of another contracting party...to supervise transmissions originating from their territories with a view to preventing such from constituting an incitement to war or to acts likely to lead thereto...to prohibit transmissions which through incorrect statements were likely to harm good international understanding, and to rectify such transmissions if they occurred..." EEK, *supra* note 2, 130-1.

⁴ US Senate Doc. No. 188, 77th Congress, 2nd Session, pp. 86-87.

⁵ 2 February 1948 USTS 1829.

⁶ Art. XI, para. 2. "The High Contracting Parties declare their adherence to the principles of freedom of the press and of free interchange of information. To this end, nationals, corporations and associations of either High Contracting Party shall have the right, within the territories of the other High Contracting Party, to engage in such activities as writing, reporting and gathering of information for dissemination to the public, and shall enjoy freedom of transmission of material to be used abroad for publication by the press, radio, motion pictures, and other means. The nationals, corporations and associations of either High Contracting Party shall enjoy freedom of publication in the territories of the other High Contracting Party, in accordance with the applicable laws and regulations, upon the same terms as nationals, corporations or associations of such other High Contracting Party. The term "information," as used in this paragraph, shall include all forms of written communications, printed matter, motion pictures, recordings and photographs."

⁷ EEK, *supra*, note 2, 75.

⁸ EEK, *supra*, note 2, 59.

⁹ 10 Nov. 1946, art. 13. See THE MIDDLE EAST INSTITUTE, I THE MIDDLE EAST JOURNAL 209 (1947)

¹⁰ 10 Feb. 1947. Articles 2, 6, 2.1, 15 and 3.1 of the Peace Treaties with Bulgaria, Finland, Hungary, Italy and Roumania respectively; Article 4 of Annex VI to the Peace Treaty with Italy (the Permanent Statute of the Free Territory of Trieste). See UNITED NATIONS, YEARBOOK ON HUMAN RIGHTS 1947 (hereinafter YEARBOOK 1947) 390-397, and PARIS PEACE CONFERENCE 1946 SELECTED DOCUMENTS (Washington, D.C., US Department of State, 1946).

¹¹ On 13 December 1946: Togoland (British and French), Cameroons (British and French), Tanganyika, New Guinea, Ruanda-Urundi, and Western Samoa; on 2 April 1947: Former Japanese Mandated Islands; on 1 November 1947: Nauru. The provisions on freedom of expression are contained in articles 13 and 14 of the Agreements on British Togoland, British Cameroon and Tanganyika; article 10 of the Agreement on French

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Togoland and French Cameroon; article 13 of the Agreement on Ruanda-Urundi; articles 9 and 12 of the Agreement on Western Samoa; article 8 (2)(d) of the agreements on New Guinea; article 5 (2)(d) of the Agreement on Nauru; and article 7 of the Agreement on the Former Japanese Mandated Islands. See YEARBOOK 1947, *supra*, note 10, 398-414.

¹² O.A.S. Res. XXX adopted by the Ninth International Conference of American States (March 30-May 2, 1948), Bogota, O.A.S. Off. Rec. OEA/Ser.L/V/I.4 Rev. (1965).

¹³ 59 Stat. 1031, T.S. 993, 3 Bevans 1153.

¹⁴ Articles 1, 13, 55, 62, 68 and 76.

¹⁵ U.N. Doc. PC/20; E/CN.4/Sub.1/38.

¹⁶ U.N. Doc. E/CN.4/Sub.1/38; Resolution 31 (1) of 9 February 1946 in Resolutions adopted by the General Assembly during the first part of its first session 39; YEARBOOK 1947, *supra*, note 10, 439. See also U.N. Document A/BUR/24 for Romulo's earlier draft.

¹⁷ General Assembly First Session, Second Part, 14 December 1946. U.N. Document E/CN/AC.1/3. Reproduced as Annex A of document E/CN.4/21 and in the YEARBOOK 1947, *supra*, note 10, 484. See generally YEARBOOK 1947 *supra*, note 10, 439 and 460.

¹⁸ Which ended up as the International Covenants on Civil and Political Rights (999 U.N.T.S. 171, 6 I.L.M. 368) and Economic, Social and Cultural Rights (993 U.N.T.S. 3, 6 I.L.M.) in 1967.

¹⁹ Established by the Human Rights Commission at its first session, 27 January to 10 February 1947. Economic and Social Council, Official Records, second year, fourth session, supplement No.3, Report of the Commission of Human Rights; United Nations, United Nations Actions in the Field of Human Rights, 1994, p115. See YEARBOOK 1947, *supra*, 424-5.

²⁰ Human Rights Commission: Second Session 2 - 17 December 1947; Third Session June 1948, Report of the third session of the Commission on Human Rights, E/800; see also E/CN.4/SR.46 to 81, UNITED NATIONS, YEARBOOK ON HUMAN RIGHTS 1948 (hereinafter YEARBOOK 1948) 464 (hereinafter "Third Session"). Sub-Commission: First Meeting 19 May to 4 June 1947, Document E/441, 5 June 1947, or Economic and Social Council, Official Records, second year, fifth session, supplement No. 5, and YEARBOOK 1947, *supra*, note 10, 477; Second Meeting 19 January - 3 February 1948 E/CN.4/38, 6 February 1948 or Economic and Social Council, Official Records sixth session, Supplement No.1, summary records in document E/CN.4/Sub.1/SRs.24 to 47; for its general observations on the "Rights, obligations and Practices to be included in the concept of freedom of information" see See YEARBOOK 1948, *supra* note, 495. ECOSOC: Fifth Session 19 July to 17 August 1947, Resolutions adopted by the Economic and Social Council during its fifth session, pages 11 et seq; Seventh Session, 19 July to 29 August 1948 (hereinafter "Seventh Session"); see generally YEARBOOK 1948, *supra*, 513. General Assembly: Second Session, 16 September - 29 November 1947 (hereinafter "General Assembly Second Session").

²¹ First Session 9 - 25 June 1947, YEARBOOK 1947, *supra*, note , 424, 490-6, 501-2, 504, Commission on Human Rights: Report of the Drafting Committee, U.N. Doc. E/CN.4/21 Annexes A, B, F (1947); Second Session June 1948, Report of the Committee: E/CN.4/95, 21 May 1948; see also E/CN.4/AC.1/SR. 20-44.

²² Australia, Chile, China (P.C. Chang), France (Rene Cassin), Lebanon (Charles Malik), UK, USA (Eleanor Roosevelt), USSR; CHR Res.E/325 and ECOSOC Res. E/437 (46(IV)). This was actually an enlargement from the original composition of just three members,

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Mrs. Roosevelt, Mr. Chang and Mr. Malik, see John P. Humphrey, *The Universal Declaration of Human Rights: Its History, Impact and Juridical Character* B.G. RAMCHARAN (ED.), HUMAN RIGHTS, THIRTY YEARS AFTER THE UNIVERSAL DECLARATION (Boston, M. Nijhoff, 1979) (hereinafter Humphrey, *The Universal Declaration*) 21, 48, and JOHN P. HUMPHREY, HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE (Dobbs Ferry N.Y., Transnational Publishers, 1984) (Hereinafter HUMPHREY, ADVENTURE) 37.

²³ See HUMPHREY, ADVENTURE, *supra*, note 22, 5, 26, 29, 39, 40, 48, 51.

²⁴ E/CN.4/AC.1/3. Reproduced as Annex A to the Report of the Drafting Committee (E/CN.4/21). See also YEARBOOK 1947, *supra*, note 10, 484.

²⁵ There is some dispute as to the pride of authorship of the draft adopted as the Convention. See HUMPHREY, ADVENTURE *supra*, note 22, 42-3; A. J. Hobbins, *René Cassin and the Daughter of Time: The First Draft of the Universal Declaration of Human Rights* II FONTANUS (1989).

²⁶ "the formulation of the article [on expression]...involved the fascinating process of collecting all formulations in national constitutions as well as drafts prepared by public and private scientific associations and organizations; the distillation of those elements not only seemed indispensable in a worldwide instrument but also was likely to be generally accepted," Karl Joseph Partsch *Freedom of Conscience and Expression, Political Freedoms*, LOUIS HENKIN (ED.) THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS (New York, Columbia University Press, 1981) 216.

²⁷ "One of them had been prepared by Gustavo Gutierrez and had probably inspired the draft declaration of the international duties and rights of the individual which Cuba had sponsored at the San Francisco Conference. There were also texts prepared by Irving A. Isaacs, by the Rev. Wilfred Parsons, S.J., by Rollin McNitt and by a committee chaired by Viscount Sankey after a public debate conducted in Britain by the *Daily Herald*. One had been prepared by Professor Hersch Lauterpacht and another by H.G. Wells. Still others came from the American Law Institute, the American Association for the United Nations, the American Jewish Congress, the World Government Association, the *Institut de droit international* and the editors of *Free World*. The American Bar Association had sent in an enumeration of subjects," HUMPHREY, ADVENTURE, *supra*, note 22, 31-2; See also YEARBOOK 1947, *supra*, note 10, 485.

²⁸ HUMPHREY, ADVENTURE, *supra*, note 22, 39-40.

²⁹ HUMPHREY, ADVENTURE, *supra*, note 22, 51.

³⁰ which was held from 19 Jan. to 3 Feb. 1948. See YEARBOOK 1948, *supra*, note 20, 494-5.

³¹ "Professor Chafee was replaced as the American member of the Sub-Commission at its next session, but whether this had anything to do with his reference to congressional witch-hunting I do not know," HUMPHREY, ADVENTURE, *supra*, note 22, 51.

³² YEARBOOK 1948, *supra*, note 22, 494.

³³ American Declaration on the Rights and Duties of Man, *supra*, note 12, art. 4.

³⁴ (For the aforementioned *Convention on Freedom of Information*)

³⁵ Proposed by the USSR; Document A/BUR/86.

³⁶ Proposed by Yugoslavia; Document A/C.3/162.

³⁷ General Assembly second session, *supra*, note 20. Resolutions 110 (III) of 3 November (proposed by Australia, Canada and France) and 127 (III) of 15 November (proposed by

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France) (OFFICIAL RECORDS OF THE SECOND SESSION OF THE GENERAL ASSEMBLY, Resolutions 14, 38) replacing the USSR and the Yugoslav proposals respectively. See generally YEARBOOK 1947, *supra*, note 10, 441.

³⁸ United Nations Conference on Freedom of Information (E/CONF.679), 23 March to 21 April 1948; see generally YEARBOOK 1948, *supra*, note 20, 497-8.

³⁹ HUMPHREY, ADVENTURE, *supra* note 22, 53.

⁴⁰ Submitted at the Second Session of the Drafting Committee. See YEARBOOK 1948, *supra* note 20, 459.

⁴¹ See Lauri Hannikainen *Article 19* in ASBJORN EIDE (ED.), THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMENTARY (New York, Scandinavian University Press, 1992) 275-8; HUMPHREY, ADVENTURE, *supra*, note 22, 72-3.

⁴² For the conference outcome see YEARBOOK 1948, *supra*, note 20, 503. In the Commission see Third Session, *supra*, note 20. In ECOSOC see Seventh Session, *supra*, note 20. See also HUMPHREY, ADVENTURE, *supra*, note 22, 55 and 58. For Third committee debates see Records of meetings: A/C.3/SR.88-116; A/C.3/SR.119-170; A/C.3/SR.174-178; "the Third Committee devoted eighty-one long meetings to it and dealt with one hundred and sixty-eight resolutions containing amendments," Humphrey, *The Universal Declaration*, *supra* note , 26; "when its [the Commission] draft of the declaration reached the General Assembly later that year, many delegations were prepared to accept it as it stood...notwithstanding the many long hours which the Third Committee of the Assembly devoted to it, the final result was remarkably like the Commission's text," HUMPHREY, ADVENTURE, *supra*, note 22, 55.

⁴³ Official Records of the Third Session of the General Assembly, Plenary Meetings, 852-934.

⁴⁴ Resolution 217 (III)A, Official Records of the Third Session of the General Assembly, Part 1, 71.

Without Article 19: Eastern Europe's Bleak Years



By Christopher Cviic

There is a splendid passage in the Bible, familiar to most people, about the siege of Jericho by the Israelites led by Joshua, Moses' successor. It is the seventh day of the siege. Obeying instructions given to Joshua by the Lord, seven priests who had each day walked round the city seven times blowing their trumpets of rams' horns, blow them again. But this time, when the trumpets have sounded, Joshua orders the people who had been following the priests to shout out loud. They do—and the wall goes down flat. The city falls.

* * *

I thought of Jericho and its walls falling down on that euphoric day in November 1989 when the Berlin Wall collapsed. I was giving live radio and TV interviews from London that day about the significance of this event for Germany and Europe, but my innermost feeling all the time was one of wonderment that this citadel, so strongly fortified on the outside and so rigidly controlled and regulated within, should have fallen so easily.

As a journalist working for a Western paper, I had personal experience of the meticulous care the East German Communist regime took to shut out all undesirable outside influences on its people. 'Secret-

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holders’—a large number of people including many who had absolutely nothing to do with military secrets or particularly sensitive material—were barred from meeting Westerners, except when the government wanted them to. Visas for journalistic visits to East Germany were difficult to get and even when you obtained it and actually got in, you could not move freely without a *Betreuer* (minder). Perhaps most tellingly of all, each time you crossed through the Wall into East Berlin you had to leave your newspapers and magazines—not just those in German but in any language—behind with the East German *Volkspolizei*.

Utterly rejected in East Germany was anything like Article 19’s provision that “Everyone has the right to freedom of...expression... through any media and regardless of frontiers.” In fact, the situation in East Germany, and a number of other then-Communist countries, provided classic examples of what life can be like without this and other fundamental freedoms.

None of the newspapers the East German population was allowed to buy from the kiosks was independent of the regime. Even the so-called non-Party ones (of which there were some) were just blander but still Party-line versions of the Party organ *Neues Deutschland*. Radio, television, cinema newsreels—they were all under close Party control. The sight of all those East Berliners, cheerful and excited, streaming through the fallen Wall to the other side, forbidden to them for nearly three decades, was proof that all that effort had been in vain.

The Hunger for True News

Nobody should have been surprised. Like in Jericho, there had been a siege but, unlike in Jericho, not just seven but more like seven times that number of modern equivalents of Joshua’s trumpets—Western broadcasting stations—had been blowing outside the walls of the citadel that was East Germany. The people behind the walls liked the voices of freedom they were hearing. The West’s large and expensive broadcasting effort aimed not just at East Germany but also at the rest of Central and Eastern Europe and the Soviet Union was one part of the Cold War in which from the start the advantage lay with the Western side.

The West’s political aims were two. The first was the loosening of the Soviet grip over the states of Central and Eastern Europe forcibly incorporated by Stalin into the Soviet Union’s zone of control at the end of the Second World War. This was to be done via provision of alternative information to the populations of those states as well as to the Soviet Union itself. The second aim was to weaken the monopoly of power of the Soviet-imposed, unelected local regimes in individual countries also

by providing uncensored information to the local populations. In the absence of a free local press that information came from Western radio and later also from television broadcasts.

All Western broadcasters shared the same broad aim, but there was a division of labor. The American-financed Radio Free Europe in Munich and its sister-station, Radio Liberty, broadcasting in the languages of the Soviet Union, took on—to the extent that was possible—the role of the suppressed legal political opposition in those countries. The British Broadcasting Corporation (BBC), in its broadcasts beamed to the area, eschewed an overtly political role, concentrating on offering factual information unavailable to the target audience. West German TV, which most East Germans were able to receive in their homes, was perhaps the most powerful influence because it could not by any stretch of imagination be called propagandist: its audience on the Eastern side (*druben*) was an eavesdropping one.

Listening Could Mean the Gulag

In all the Communist countries, listening to 'hostile foreign propaganda' or—in the case of East Germany—watching 'capitalist TV' was a punishable offense which landed many people in prison and, in the Soviet Union, in the *gulags*. In order to eliminate the temptation altogether, the Communist authorities operated a large and prohibitively expensive system of 'jamming'—interference with the reception of foreign radio broadcasts by broadcasting high-pitched noise on the same wavelengths. 'Jamming' certainly made listening—particularly on the short wave—more difficult (sometimes even impossible), but Western broadcasters tried to beat the Communist jammers by changing wavelengths all the time. Clearly, the Iron Curtain was a barrier to the free flow of information but in the end it proved to be less impenetrable than the Communists had hoped—and many in the West had feared when the Cold War started in the late 1940s.

But beside this huge and, judging by results, ultimately successful Western broadcasting effort to bring a different view to the people on the other side of the Iron Curtain, there were other ways in which the West was helping local seekers after uncensored information. I was one of those seekers many years ago before I came to Britain. That was in the immediate post-1945 period when I was still living in Croatia, then a part of Yugoslavia. At that time Yugoslavia was a tough and militant Communist dictatorship, ideologically one of the most hardline and anti-Western in the Soviet bloc to which it then still belonged. Later on, after Yugoslavia's expulsion from the Soviet bloc because its leader, Marshal

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Tito, would not take orders from Stalin, Yugoslavia got some help from the West and its regime, while still remaining Communist, became more laid back and opened the country's borders. But the early ideological militancy still lingered on below the surface, reappearing from time to time in the shape of vicious campaigns against 'the Enemy.'

Even after the country had left the Soviet bloc, there were for a long time no Western papers or magazines on sale anywhere. But—and here we were luckier than the East Germans—Western publications were available to visitors to the American, British and French Embassy reading-rooms and libraries. All three existed in Zagreb where I was living, but the snag was that the police were, at least in the earlier post-war period, watching and photographing entrances to those places. However, any risks associated with those visits were far outweighed by the sheer excitement of being able to read a wide variety of views on various contemporary issues. Those reading-rooms and libraries were a god-send for those like myself and a group of friends who belonged to a secret Catholic lay group founded in Croatia at the beginning of the Second World War by an anti-Fascist French-educated Croatian Jesuit. The group, whose founder was obliged later on first to hide from the police and then to flee Croatia pursued by the Gestapo, was inspired by the ideas of contemporary Western (especially French) Catholicism. It continued to operate after the Communists took over from Croatia's quisling wartime regime of Ante Pavelic. I joined it in 1947.

Access to Reading Rooms Was Vital

One of our greatest needs was to be able to keep in touch with the sources of our inspiration abroad. However, importing printed material from the West was at that time well-nigh impossible. All bookshops were nationalized and only certain of them were licensed to import books and magazines from the West for approved institutions and individuals. But even if we had been able somehow to persuade a bookshop to take an order from us, censors at the central post office, who were opening all the mail coming from the West, were liable to impound any newspapers, magazines or books that looked suspect. Access to those reading-rooms and libraries was vital for us, because there we could obtain material for use in the publications we were producing (the term *samizdat* or self-publishing, which comes from Russia, had not yet been invented).

One of the magazines of great interest to us that was available in the French reading-room was the monthly *Esprit*. Emmanuel Mounier, its founder and editor-in-chief, who had been imprisoned by the Vichy regime during the Second World War, was the leading figure of the

Personalist movement of which our group in Zagreb was an offshoot (there were Personalists in other parts of Central Europe beside Croatia—notably in Hungary, Poland, Slovakia and Slovenia). We were able to get old copies of *Esprit* which had come off the display stand to take home. I still have in my personal library the special December 1950 issue of *Esprit* on Mounier who had died in March of that year.

We also followed closely the work of Jacques Maritain, a pupil of Henry Bergson and a distinguished Catholic philosopher in his own right. Maritain, who after the Second World War became French Ambassador to the Holy See and was friendly with Pope John XXIII and Pope Paul VI, is recognized as one of the spiritual fathers of the historic 1962–65 Second Vatican Council. I remember translating for our distribution a seminal essay of Maritain's called 'Who Is My Neighbor?', written while he was in the United States during the Second World War as an exile from occupied France. The essay set out, from the Catholic point of view, the conceptual basis for modern ecumenism as practical cooperation among people of goodwill but of different creeds, without sacrificing anybody's spiritual identity. Today, of course, ecumenical cooperation is taken for granted but at that time, more than a decade before the start of the Second Vatican Council, it was a bold and novel idea.

Windows to the West

Through the window into the Western world provided by the reading rooms, we obtained information—particularly on other issues which also interested us such as democracy and its institutions, the rule of law, ideology, de-colonization, the Second World War from the Western point of view, relations between the United States and Europe as well as those among the European states. In the American one, for example, I was able to read the German-language but U.S.-financed monthly *Der Monat* from Berlin, which had contributions from leading Western thinkers and writers of the time like Isaiah Berlin, Raymond Aron, Arthur Koestler, Ignazio Silone, Herbert Luethy and many others. Melvyn Laski, *Der Monat*'s founder and first editor, later went to London to edit *Encounter*, one of the most influential Western publications after 1945.

There was an outcry in America, Britain and elsewhere in the West when it was revealed in the 1960s that finance for *Encounter* and *Der Monat* as well as Radio Free Europe and Radio Liberty had originally come from the CIA. After the scandal, Congress took over the financing of the radios, but we, the consumers, were not shocked in the least: from our point of view, that was U.S. tax-payers' money well and intelligently

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spent. In any case, we took our information, always using our critical faculties, wherever we could find it. One of the unlikely but useful sources for me personally was *Bolshevik* (later re-named *Kommunist*), the theoretical monthly of the Central Committee of the Communist Party of the Soviet Union, which regularly denounced Western 'obscurantist' schools of thought such as Logical Positivism, Holism, Neo-Scholasticism, French Personalism and Existentialism and others but gave, at least in outline form, their basic ideas.

Small Groups Launched Own Publications

In comparison with what many other groups active in the Communist-ruled state were doing, our own effort was quite modest. It involved at most 200–300 people and consisted of publication and dissemination of written material (typed by ourselves), philosophical, religious and political discussions, semi-liturgical gatherings and poetry readings (all in private homes)—in other words, the sort of activity that would anywhere in the West have been considered unremarkable. For us, however, it carried many dangers because, although not overtly political, what we were doing was taking place without the permission of the authorities, which we never sought in the first place because we knew we would never get it and that the request would have drawn the attention of the police to our activities. Fortunately, our security was good and we managed to avoid being discovered by the police.

My own direct connection with the Zagreb Personalist group ceased in 1954, when I was auditioned, and accepted, for a post with the BBC Yugoslav Service in London and, after a long wait and much pressure on my behalf from London, left Croatia for what I thought would be a three-year stay but became a permanent one when the Yugoslav Embassy refused to renew my passport. The group had ceased to exist some years before I was able to return for the first time in 1969, by then a British subject and a member of *The Economist's* London staff. In the new, more relaxed circumstances in Yugoslavia, with the country's borders with the West open, other more open and public (though still limited) forms of activity had become possible for Catholics and other non-Communists.

Back in the late 1940s and early 1950s, however, our work, though small-scale, had come under the under the heading of activities that the large, well-funded state apparatus of information control working closely with the police was supposed to intercept and stop.

The structure and work of these apparatuses of information control in individual Communist countries during the period of the Cold War was

analyzed in detail by Paul Lendvai, a Hungarian-born Austrian journalist, now Director of Austrian External Broadcasting, in his classic *The Bureaucracy of Truth* published by Westview Press in 1981. With many forbidden topics to watch out for, these Communist controllers of information tended to err on the side of caution. The result was that information a Western journalist would have considered quite harmless was suppressed. I remember once checking with an East German official when and where the proceedings of the Party Academy's conference would be published, whereupon he exclaimed, in shocked tones: '*Aber das ist nicht für die Öffentlichkeit!*' (But this is not for the public domain!). In Communist countries, the really interesting reading material—including translations from foreign newspapers—was to be found not in the public press but in one of a number of confidential bulletins prepared for Party *aktivs*.

Under the Surface

But behind the picture of a monolithic political and ideological uniformity in the Communist media, the reality was much more complex. First of all, there was almost permanent tension in the media between *apparatchiks* occupying top posts who were chosen for Party loyalty rather than professional skills, and professionals usually to be found at middle and lower levels. It is true that most clashes had to do with inner-Party struggles but occasionally they arose because some journalists had allowed themselves to be led by their professional rather than Party instincts. The offenders were punished either by being sacked or by being demoted to a lower post,

The frustration felt by those professionals when confronted with questions by Western reporters like myself was palpable. They wanted to show that they were not just ignorant Party hacks, that they knew things—and so they occasionally blurted out things they should not have done just to keep the respect of Western colleagues. The real importance of the existence of this pool of professionals with skills and experience, regardless of what posts they were occupying in the hierarchy at any given time, was that it could be drawn upon during periods of liberalization and, especially, those periods of fundamental change such as in 1989–90.

Some countries, Poland, for example, went in for formal censorship. Between a newspaper's press day and publication day there was always a period during which editors and, sometimes, individual journalists negotiated with the censor about what could and could not be published. The censor was watching out not only for material critical of the

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Polish regime but also—perhaps even more—for what could upset Moscow. Polish censors had lists consisting of hundreds of forbidden items, but there were also 'grey areas' where some flexibility by the censor was possible. In this in most respects grim business, there were, as I heard from Polish journalists at the time, also moments of comedy such as, for example, when the censor took on the role of sub-editor and even literary critic.

From the Polish regime's point of view, formal censorship was necessary also because in Poland—unlike, for example, in East Germany or Czechoslovakia—there were a few diocesan papers and periodicals as well as a publishing house in Cracow under the wing of the Roman Catholic Church. These were not subject to regular daily control by the Party—and were regularly and heavily censored. Also Catholic but enjoying political and financial support from the regime was the pro-regime *Pax* movement led by Boleslaw Piasecki, a pre-war Fascist who fought first the Germans and then towards the end of the war the Soviet Army which captured him. He was tried, sentenced to death and reprieved appearing shortly thereafter in Poland with the mandate to split the Church. His movement was given a daily newspaper and several periodicals to run, financed by the proceeds from sales of devotional articles that *Pax* was allowed to run. Its publishing house because of government backing was able to publish popular (and profitable) translations of Catholic but also other popular Western authors such as Graham Greene, Evelyn Waugh, Heinrich Boell, Francois Mauriac and others whom the official Church could not afford to publish.

Growth of Samizdat

Underground publishing, a legacy of the German wartime occupation, played an important role under Communist rule after 1944. Underground publishing benefited from the availability of foreign material from Western embassies and cultural centers. During the period of liberalization in 1956-57, the role of underground publishing diminished. But it started flourishing again in the 1960s when the official press was particularly dreary—with a few exceptions such as the weekly *Polityka*. There was a huge increase in the volume of underground publishing by various opposition groups in the runup to and during the 1980-81 Solidarity period, some of which appeared in the West. There was a crackdown on underground publishing after the imposition of martial law at the end of 1981, but it did not last long. By the mid-1980s Polish *samizdat* had a competitor in the official press which was showing a new vitality. It was using the opportunities offered to it by the pro-

gressive relaxation of Party control over the media encouraged by the example of the *glasnost* era in the Soviet Union ushered in by Mikhail Gorbachev in the mid-1980s.

In Czechoslovakia, the Communist coup of February 1948 sealed the fate of the relatively free press the country had had after its liberation from Nazi rule in May 1945. There was repression, particularly of the Catholic Church, but also prosperity: during the occupation. The Germans invested heavily in Czechoslovak industry with the result that the country emerged out of the war with an economy on a par with that of Sweden, for example. It was also—unlike its neighbors Hungary and Poland and, even more, Germany—almost totally undamaged by the war. Prosperity which helped keep Czechoslovakia tranquil after the Communist coup in 1948 ended abruptly in the early 1960s. Economic setbacks suffered by Czechoslovakia's centralized economy, which was forced to carry the heavy burden of the Soviet bloc's post-1945 'second industrial revolution,' opened a debate which soon grew into a much broader one about politics. The writers added their demands for liberal reforms at their congress in 1967. All those different currents merged into a broad movement that had come to be known as the 'Prague Spring.' After its crushing in August 1968, the Party cracked down on the dissidents and their *samizdat*.

Czechoslovak Communist hardliners had been traumatized by the dramatic collapse of their control over the media in early 1968 after the election of a reformist, Alexander Dubcek, as First Secretary of the Party in January 1968. His election triggered demands for the total abolition of censorship in radio and television discussions in February 1968. Without asking anybody, Czechoslovak journalists began to take possession of their newspapers and radio and television studios, and the Party seemed to be agreeing with them.

The Party organization of the Central Publications Board (CPB), the official name for the censor's office, called for the abolition of 'political' censorship, and in early March 1968 the Party presidium removed the CPB from the jurisdiction of the Ministry of the Interior, thus in effect suspending censorship. The Party's draft Action Program prepared by the reformists expressly condemned any effort to 'coercively prescribe' what people would be allowed or not allowed to know, what they might or might not be able to express openly, where and when public opinion could have a say and when not. In June 1968 the Party authorized the closing down of the censor's office, and the National Assembly passed an amendment to the Press Law which *de facto* ended preliminary censorship. Pending a new law, responsibility for protecting state, eco-

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conomic, and official secrets was placed on the shoulders of the media—a solution containing its own dangers but an improvement on formal preliminary censorship. Party leaders, even the reform-minded ones, had second thoughts but the movement seemed unstoppable. Czechoslovakia once again had a press not unlike that in the democratic, ‘bourgeois’ republic before the Germans occupied and dismembered it in 1939.

Hope and Aftermath of ‘Prague Spring’

Those were heady days, not least for those of us Western journalists who had been obliged to read the dreary articles that many of those same journalists had been churning out until a few weeks before. In March 1968, as I stood on the balcony of my room in the Jalta Hotel in Wenceslas Square in Prague, I could see down in the square in front of the newspaper kiosk—although it was only 7 a.m.—long queues of people. I knew they were there so early because they wanted to make sure of getting a copy of the *Literarni listy*, the organ of the Writers’ Union which was spearheading the campaign for democracy. By 8 a.m. not only that paper but all the others too, even *Rude Pravo*, the Communist Party organ, were sold out. Only a few months earlier you could have bought any paper at the kiosk down in the square at noon or even later.

Another very vivid memory from that period is the ashen face of Viliam Siroky, one of the Party hardliners, on television in the evening, obviously nervous and at a loss for an answer while being questioned about his role in the Stalinist trials by journalists who even a few weeks ago would not have dreamt that they could be putting such questions.

Half a year later in the spring of 1969, Czechoslovakia had been ‘normalized.’ There was no need any more to queue for the papers early in the morning: piles of them were still there at noon—or even later—at the kiosk in Wenceslas Square. The systematic purge with the aim of removing from Czechoslovak journalism all those who had in any way been active in the ‘Prague Spring’ went on for a long time afterwards. The places of those who had been purged were taken by third-rate but reliable people. Heavy punishments were meted out to those who refused to keep silent and through Charter 77 and other underground outlets publicized their critical views. This repressive policy was continued even after Mikhail Gorbachev ushered in the era of *glasnost* in the Soviet Union in the mid-1980s.

Long before Gorbachev appeared on the Soviet scene, the elaborate system of censorship administered by an institution popularly known as *Glavlit* had been challenged several times. The first challenge during

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the slow 'thaw' that followed Stalin's death in 1953 was triggered by Nikita Khrushchev's historic 'secret' speech at the XXth Party Congress in February 1956 denouncing Stalin. Soviet *samizdat* began to flourish but so did official magazines. *Novyj Mir* published Alexander Solzhenytsin's story 'One Day in the Life of Ivan Denisovich.' The crushing of the 'Prague Spring' by the Warsaw Pact in 1968 provoked a sympathetic reaction among the Soviet dissidents which was reflected in the underground publications of the period. Another spur to underground publishing came from the campaign for Jewish emigration to Israel in the 1970s and 1980s. Like with other dissident material—that by, and about the *refuseniks* (Soviet Jews who had been refused a visa to emigrate to Israel) helped mobilize public support in the West. Broadcast back to the Soviet Union by Western stations, it provided moral and political encouragement to activists. The same was true of other dissident material beamed back into Eastern Europe and the Soviet Union by Western radios, notably Radio Free Europe and Radio Liberty.

The authorities' attitude towards underground publication varied from one of tolerance (even covert encouragement) towards Russian nationalist publications, like the notorious *Vecher*; to total hostility towards non-Russian nationalist dissent—especially in Ukraine and the Baltic Republics. The Ukrainian dissident material was widely disseminated among the Ukrainians in Europe, Canada and the United States. Expatriate Lithuanians disseminated the extremely well-documented *Chronicle of the Lithuanian Catholic Church*. The *Chronicle* and other religious *samizdat* achieved worldwide circulation thanks to Western organizations such as the Keston Institute for the Study of Religion in Communist Lands in Britain. It was from a Keston connection while on a visit to Moscow in the late 1980s that I learnt that one of the Russian thinkers whose brilliant texts on ethics, freedom, contradictions of Communism and other topics my friends and I had been translating and circulating in Zagreb in the late 1940s and early 1950s was also one of the most popular figures in Russian religious *samizdat*. He was Nikolai Berdyaev, a prominent Russian Christian philosopher who had been sent together with a number of leading intellectuals into exile by the Bolshheviks in the early 1920s and had settled down in France where he died after the Second World War.

Ironically, it was a Soviet government initiative that in the 1970s started a process that eventually led to the incorporation of various Western demands for greater media freedom in Europe's eastern half into a document signed by the Soviet Union and other Communist governments. This happened within the context of the East-West

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detente in the 1970s at the Conference on Security and Cooperation in Europe (CSCE).

Push for Detente Opens Doors

Moscow's purpose in pressing for a pan-European conference was to reinforce its hegemony in its zone of control in Eastern Europe by obtaining international legal endorsement for the territorial *status quo*. In other words, the Soviet Union wanted to formalize the results of the Second World War. It also wanted to slow down the pace of political and economic integration of Western Europe and weaken NATO. By fostering an atmosphere of *detente* it hoped to sap the will of Western countries to maintain effective defense arrangements and ultimately undermine the long-established military links between the United States and Western Europe. It could also be assumed that the Soviet Union hoped to secure commercial advantages and greater access to Western scientific and technological achievements.

The British government was highly skeptical about the project. So was the United States government. Italy, Greece, Holland and Turkey took the same view. By contrast, Norway, Denmark, Belgium and Canada saw the conference as essentially a positive development. France saw such a conference as a way for NATO to pursue a peaceful roll-back through the loosening of the Soviet Union's grip on its East European allies. The Germans saw such a conference as a way of improving intra-German relations.

These initial Western differences were mirrored on the Eastern side—though less publicly. East Germany welcomed the possibility of strengthening its international status but worried about giving West Germany a chance to increase its political and cultural influence. The Czechoslovak regime, too, still coping with the legacy of the 'Prague Spring,' was fearful. Poland was keenly interested in additionally strengthening its title to its territories in the West acquired from Germany at the end of the Second World War and was not particularly worried about political dangers from it. On the contrary, the then still relatively popular regime of Edward Gierek which had come to power after the riots in Gdansk in December 1970, welcomed a chance of raising its international profile. Hungary under the reformist Janos Kadar regime that had come to power after the crushing of the 1956 revolution, was more conscious of economic benefits of such a conference than of any political dangers. Besides, it was discreetly trying to increase its international freedom of maneuver—as was, for its own reasons, the non-reformist Romanian regime of Nicolae Ceausescu which hoped that its

anti-Soviet stance within the Soviet block would earn it diplomatic and financial kudos in the West, which it certainly did for a while.

In the end, Western skeptics overcame their doubts and decided to go ahead—not least in order to avoid seeming hostile to the idea of an East-West *detente*. But they also decided, with the support of European neutrals Austria, Sweden and the others, to extract maximum concessions from the other side, and in this they were remarkably successful.

It was the Western rather than Soviet view of *detente* that triumphed. After negotiations lasting three years, the Conference adopted in August 1975 the so-called Helsinki Final Act. This document was signed *inter alia* by top Soviet and East European leaders who undertook to publish it in full in the press of their countries. The scene finally was being set for implementation of long-ignored principles of the Universal Declaration of Human Rights, including Article 19.

Landmark Helsinki Declaration

The Declaration of Principles guiding the relations between the participating states in the wake of Helsinki, to which the Soviet Union from the start attached particular importance, in the end emerged as a political code of good behavior. Each of the principles was to be interpreted in terms of the others and applied unreservedly to all participating states, irrespective of political, economic and social difference among them. In effect, the Declaration represented an implicit repudiation of the so-called doctrine of limited sovereignty for Communist nations which was at that time coupled with the name of Leonid Brezhnev, the Soviet leader who had ordered the invasion of Czechoslovakia in 1968 on the grounds of the alleged right of Soviet-block countries (meaning, of course, the Soviet Union) to protect the achievements of Socialism in other Socialist countries. The Declaration did not consecrate the political and territorial *status quo* in Europe. Quadripartite rights and responsibilities of four wartime Allies (Britain, France, the Soviet Union and the United States) in Germany as a whole were safeguarded, which left intact the legal basis for the process of German unification in 1990.

Questions relating to the freedom of the press were dealt with in the Final Act's section covering cooperation in humanitarian and other issues (Basket III). Here were set out practical ways accepted by all participants for facilitating the freer and wider dissemination of oral, printed, filmed and broadcast information of all kinds (including religious information), together with improved access to this information for the ordinary man in the street. The provisions dealt, for example, with practical ways for increasing the availability of foreign newspapers (through

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libraries, subscriptions, kiosks, etc.). The text on radio broadcasting, which had been the scene of a long argument, in the end contented itself with the expression of a hope that improvements which had occurred by that time (the end of jamming for all except Radio Free Europe and Radio Liberty) would be continued.

There were also provisions for the improvement of working conditions for journalists relating to visa and travel applications, access to sources, the right of journalists to transmit their reports home completely, normally and rapidly, and their right not to be penalized or expelled for the legitimate pursuit of their profession. Most of those provisions were extended to technical staff as well as journalists. The texts on culture provided for wide-ranging cooperation and expanded cultural relations. The section on education provided a practical basis for cooperation by promoting direct contacts between educators and scientists, facilitating the exchange of information among these people, improving teaching methods and knowledge of foreign languages and civilizations.

It took another decade and a half before the Soviet Union's withdrawal from Central and Eastern Europe and, in 1991, its collapse.

During the intervening years both local efforts to achieve greater press freedom and international backing for those efforts benefited from the existence since 1975 of formal commitments entered into by the Communist governments to observe the provisions of the Helsinki Final Act. The very fact that the Final Act was published in full in the main newspapers in the Soviet Union and Central and Eastern Europe was helpful: when challenged about non-compliance with the Helsinki Final Act's provisions, Communist authorities could no longer pretend to have no knowledge of various commitments entered into by their own government. The overall situation did not improve dramatically but it did improve—slowly and gradually, more in some countries than others, but with a momentum towards change building up. This was not least because the CSCE had become a process, providing an increasing space for those in the countries concerned who were struggling both for independence from Moscow and for more democracy at home.

Today's Task: Building Democracy

Today, in the completely new situation in Europe that has come about as a result of the collapse both of Soviet hegemony and of Communism itself, the struggle for press freedom goes on as part, no longer of a struggle for national independence but of the attempt to build up democracy, the rule of law and the market economy.

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The struggle is the same but the protagonists have changed to an extent. The role played in support of press freedom by individual Western governments is now supplemented by bodies such as the Council of Europe, the European Parliament, the European Commission and others including a number of non-governmental organizations. And individuals like the Hungarian-born American millionaire and philanthropist, George Soros, who has set up a number of Open Society Institutes in various countries in transition which offer substantial funds to the cause of the civil society, the independent media. In particular, I am familiar with his important work which began in Hungary during the Communist era, and now sit in my native Croatia on the Board of the local Open Society Institute, whose activities go beyond the support of the independent media.

In the Baltic Republics, the Czech Republic, Hungary, Poland, Slovenia and lately also Bulgaria and Romania, there are no restrictions on the work of the foreign media and the local media operate on the whole under conditions close to those prevailing in Western Europe and the United States. However, there has been a worrying backlash against the media which are increasingly being blamed for all the economic and social problems those countries are experiencing. The Roman Catholic Church in Poland is in the forefront of demands for stricter moral curbs which reflect a deeper unease about Western influences in general. These feelings are finding a sympathetic echo among sections of the population—mainly the older generation. But no significant political movement is demanding the introduction of formal censorship or curbs on the freedom of the press.

In contrast, in Belarus, one of the successor republics of the Soviet Union, the situation is deteriorating. At the time of his election in 1994, President Alexander Lukashenka had given assurances that he would end the state monopoly on mass media, political censorship and persecution of journalists, and allow the independent distribution of information. According to a well-documented report published in September 1997 by the London-based organization Articles 19 in association with the Belarus League for Human Rights, the reverse has happened. The government has stifled not only direct criticism but, more generally, the expression of any alternative views, particularly in the state sector of the media and in broadcasting.

Those who have attempted to resist the restrictions have been dismissed or effectively forced to resign. Non-state media, while not subject to internal censorship in the same way, have had their printing and distribution obstructed by the authorities. Individual journalists have been

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subjected to threats and physical violence in an attempt to stop them from carrying out their work. Belarus is the only place in Europe where the Soros Foundation was obliged to close down, whereas it is for example enjoying full freedom of action in Russia. Intriguingly (but by no means surprisingly), Russian TV channels are seen as a threat to the Belarus regime's monopoly of broadcasting. Russian commercial TV journalists are constantly being harassed in their work and occasionally arrested and deported. Compared with the situation in Belarus, that in Russia appears more liberal, though organized criminal and other interests are trying to obstruct journalists in their work and not hesitating to use physical violence against them. A prominent journalist investigating malpractices in the Ministry of Defence was killed, but his killer has not yet been brought to justice.

The situation in the region of former Yugoslavia is in a category of its own, because it is the only part of Europe (together with Chechnya) to have experienced war since 1945. Indeed the media—above all those in Serbia controlled since his arrival to power there in 1987 by Slobodan Milosevic—have played a sinister role both by inciting hatred and intolerance but in the runup to the war and during it. The role of the media since the end of the war has become, if anything, even more crucial, with potential for doing good this time. Indeed it would be impossible to exaggerate the importance of the role of the media—both print media and television in Bosnia, for example.

Important Role for OSCE

An organization that has been particularly active since the signing of the 1995 Dayton Accords that ended the fighting there has been the old CSCE under its new name, the Organization for Security and Cooperation in Europe (OSCE). In the post-Communist era it has become much more than a forum for debate, as its high profile in Bosnia has demonstrated. One of its chief duties—in addition to organizing and monitoring elections there on behalf of the international community—has been to help, together with a number of other concerned governmental and non-governmental organizations, the development of free and independent media. There have been successes—in local journalism and broadcasting, here and there in the national press especially the weeklies. Here is a small example:

Information that had come from the OSCE and had been published—without, the OSCE claimed to me, its authorization—on the eve of the autumn 1997 elections in Bosnia about the illegal activities of certain top Croat officials in Mostar played a major role in their subsequent

fall from power. Western agencies in Bosnia—including the OSCE—helped Mrs. Biljana Plavsic, one of the few Bosnian Serb leaders willing to work with Dayton, gain access to the media. Without that access she would not have been able to publicize facts about high corruption and other unsavory activities of her chief rival, Radovan Karadzic.

Those revelations were an important factor in the struggle for power which she seems to be winning and her rivals are losing—not least because NATO troops helped Mrs. Plavsic's supporters grab TV transmitters from the rival faction. Nobody who believes in media freedom can have been happy at the sight of Western soldiers taking over those transmitters, but it is also true that it was done on behalf of the legitimate government and that what was done could be likened to disarmament, albeit of an ideological kind. An intriguing proof of the impact the media, particularly of the Sarajevo weekly *Dani* which specializes in investigative reporting of issues such as corruption, is the increasing anger they are causing in certain sections of the ruling Moslem SDA party.

Media Will Become Even More Important

The press, radio and television will become even more important in the region in the future during the period of transition to peacetime politics. Groups currently in power in Serbia and Croatia see their control of the media, especially of national television which for the majority of the population remains the main source of information, as the key to their survival in power. The battle for the control of the media is currently being fought, with the opposition at a serious disadvantage as I could see during my six-month stay in Croatia in 1997.

I was there as editor-in-chief of a new 80-page independent political weekly in color, initially funded by USAID, the European Union, the Soros Foundation and other Western donors. The project was bitterly opposed by the government of President Tudjman. All sorts of pressure, including commercial ones, were used to cause the project to fail. It survived and I left the country at the end of my six-month contract reasonably optimistic, despite all the problems, about the future both of Croatia and of post-Communist Europe.

But to succeed in building a successful civil society it will badly need a free press unfettered by censorship, press laws and other devices designed to curb it—one able to realize the promise of Article 19 for free news. The key to such a press is, I am convinced, is professionalism. That, just like in Communist times, will not just develop by itself. It needs again, as it did in the period from 1945 to 1990, support from elsewhere by those who believe—as I do—that a free

press with all its flaws and faults is the indispensable basis of liberal democracy and the rule of law.

Press Freedom IS a Universal Right



By Cushrow Irani

I remember the time when Singapore elected its first opposition member of Parliament. Prime Minister Lee Kuan-Yew was distraught, his dreams for Singapore would be aborted, order and progress would be stifled and the island nation would go steadily downhill. The fact that the doom forecast did not materialize is of less moment than the spectacle of the entire government and the ruling People's Action Party focusing on the elimination of a single rotten apple from the wheelbarrow.

Incessantly the choice was hammered home, freedom or bread; it was given as a religious truth that you could not have both. This was also the time when Amadou-Mahtar M'Bow was playing up to the fears of most Asian and African dictatorships from his perch as director-general of UNESCO. A New World Information and Communication Order was conceived, there was the Non-Aligned news pool for exchange of government propaganda and a whole variety of restrictive ideas became current coin to fetter liberty and stifle the free expression of ideas and opinions.

Their target was clear enough. It was the Universal Declaration of Human Rights adopted by the United Nations in the wake of the horrors of World War II.

Cushrow Irani, a vice-chairman of the World Press Freedom Committee, is editor-in-chief and managing editor of The Statesman, India. He has been twice chairman of the International Press Institute and is a past president of the Indian Newspaper Society.

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Initially the United States was merely amused, it ignored these developments, it had its First Amendment to the Constitution saying majestically that Congress shall pass no law abridging the freedom of the press. Responsibility, impartiality, accuracy, fairness, privacy and other code words came into current usage at UNESCO general assemblies; what was left unsaid was that judgments on such matters would be made by the respective governments because governments represented society and acted in their name.

Very quickly the Indian information and broadcasting minister, Vasant Sathe, claimed on the floor of parliament that the entire government was entitled to the right of privacy—whatever ministers chose not to disclose was protected by the right of privacy! In 1976, Indira Gandhi suspended the power to move the courts for enforcement of the Fundamental Rights enshrined in the Constitution as part of her effort to make the trains run on time during her infamous Emergency. The judiciary responded with courage and imagination. In *Masani vs Binod Rao* they held that denying access to the courts did not mean that the law of the jungle prevailed. Pointing out that the rule of law existed in India long before the Constitution was adopted in 1950, their Lordships of the Bombay High Court sternly required the government to justify their actions even in terms of their own Emergency laws. The government failed and the citizen triumphed. But these were exceptional cases, the general picture was bleak.

Uphill Fight for Freedom of Expression

M'Bow used all his manipulative skills to grant large subventions to the wives of some journalists in the Third World in return for their support and the support of their husbands for a New Order; when I spotted some cases in India, I published the details much to the embarrassment of the people concerned. The ding-dong battle for liberty and freedom of expression was fought year after year at annual assemblies of UNESCO but we were at a disadvantage. As NGOs we would be called upon only after governmental spokesmen had exhausted themselves. I remember a time at the Belgrade General Conference of UNESCO when to my utter surprise the delegation of Kuwait asked that the time allotted to them should be given to the "distinguished Chairman of IPI." I did not know the Ambassador and to this day I cannot believe my good fortune. At the end of the 15 minutes allotted to me, the head of delegation of India refused to allow his senior bureaucrat who had raised his hand to exercise his right of reply. The minister later told me that he did not want his bureaucrats to make fools of themselves in this way!

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For 20 years and more the illusion was fostered. Economic development and ideas of freedom and liberty could not co-exist. There had to be a choice. The major task was to improve the lot of the poor, and silly notions of saying what you please was a luxury that could wait. We demanded to know who was going to determine what dosage of liberty could be allowed for a unit of development and where was the connection between human freedoms and economic development. The premise that an all-powerful potentate could take decisions faster than the rules of democratic debate would allow, was extended to suppress all dissent.

Throughout Asia, in Singapore, Malaysia, the Philippines, Indonesia, even Pakistan the dishonest propositions became current coin. Overseas investors complained in my hearing that there were too many hungry sharks in the Indian Ocean which had to be fed before any contracts could be signed. This was not my phrase, an intelligent Bofors official used it in his testimony before Swedish investigators probing allegations of bribes paid to Indian politicians and others by the Swedish company to land the \$1.68 billion contract for field howitzers for the Indian Army. I once asked an Indian businessman who operated abroad how much he thought he had to provide as a percentage of the order he hoped to get to bribe government officials. He said about 10 percent. He quickly added that in Indonesia, it was quite simple. You settled with Suharto's family and there was no further problem. He also recalled wistfully that it was the same when Rajiv Gandhi was prime minister of India. Now it was more difficult, there were too many mouths to feed, too many hungry sharks in the Swedish official's telling phrase.

Currently Suharto and the IMF are exchanging accusations of who is responsible for the currency crisis in Indonesia. Suharto complains nobody tells him and he is bent on a course of action that the IMF are unable to accept. Be that as it may, it is necessary to tell General-cum-President Suharto that if he had allowed dissent and debate in the Indonesian press he would not have been taken by surprise.

Gags on Press Shield Abuses of Power

The Philippines provide another example of abuse of power supported by a gag on the press. The billions stacked away in Swiss banks by the Marcos couple have been traced, not all of it perhaps but very substantially. After resisting to the bitter end the disclosure of bank documents under Swiss laws of assistance in criminal matters, Imelda Marcos allows herself to say that she is delighted that her husband Ferdinand's wealth will be used for the benefit of the Filipino people. Imelda Marcos must answer the question how a soldier of fortune, a once upright officer,

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managed to accumulate all this wealth in the first place. In those days, a courageous publisher, Chino Roces in Manila, singlehandedly tried to expose the corrupt president, he was hounded and died a disillusioned man.

South Korea provided an interesting experience. General Rho Tae-Woo was in charge and I was informed that Korean journalists had developed the distressing habit of walking in front of speeding Army vehicles on lonely roads. I went to Seoul and called on the general in the company of my friend Kim Kew-Whan, an academic attached to Seoul University. It would have been inappropriate to take along a local journalist. Fourteen journalists had by then died this way. I made my point as politely but as firmly as I could. The general complained that these journalists were drunk and added that he assumed I knew how journalists drank. I asked whether it was official policy to discourage drinking by having army trucks run them over. After a few more tense exchanges, General Rho stood up to terminate the interview. He said he recognized the reputation of the IPI chairman and would not attempt to offer explanations. If I would return in a few months he promised I would have no such complaints to make. I promptly withdrew my half-extended hand and said in that case I would shake his hand when I came next.

As I turned and walked away I could see that the general appeared shell-shocked, my worry was whether I had endangered my colleagues whom I was leaving behind. Kim Kew-Whan told me not to worry, my conduct would make Rho Tae-Woo think again. There were no more incidents. Rho Tae-Woo is a broken man today, pardoned for his many abuses of power by the courage and generosity of President Kim Dae-jung, the man he once sought to destroy. Again if the Korean press had been able to do their duty, the military would have had their warnings.

If I recount briefly the experience in India, it is simply because I know my own country best. During the Emergency Indira Gandhi introduced a whole new Chapter into the Constitution – Fundamental Duties. The idea clearly was to deny fundamental rights until she was sure that the citizens were observing their duties. As she alone would be the judge of compliance it suited her nicely. The Chief Censor would issue oral orders, if they put it in writing they knew we would challenge them in the courts.

A few examples of how “national interests” were sought to be protected in this fashion will be of interest. When an actress friend of Indira Gandhi was caught shoplifting and fined on the spot in London, it was not to be published. When her close business associates lost important cases in court, it could not be reported although court proceedings were

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public. When we repeatedly got the better of her government in courts challenging her arbitrary actions, like seeking to appoint an unspecified number of government directors on our Board, confiscating our entire printing press in Delhi, court directions to government to explain why they had taken my passport away, and organizing a boycott of advertising from industries under state control and much else, the Chief Censor would not allow these to be published. That some leading newspapers made themselves available to the government to suggest new ways to harass *The Statesman*, I merely put down to a certain lack of character. After the end of the Emergency, L.K. Advani, the leader of the Bharatiya Janata Party, said it all when he chided the offending newspapers saying—“When you were asked to bend, you chose to crawl.”

Bread or Freedom: A False Choice

It is time to draw two main lessons from the random recital of personal experiences, they are only illustrative, not exhaustive:

- 1) There is no connection that has been demonstrated between freedoms and economic development; the effort to link the two is dangerous nonsense. *The Economist* newspaper put it well in its comment after Indira Gandhi lost the post-emergency elections of 1977. Never again, they said, will anyone be able to say that there was a choice between freedom and bread.
- 2) Governments, *ex hypothesi*, would like to keep the press in thrall. No politician anywhere in the world, in the North, the South, the East, and the West can be expected to jump for joy when he is criticized. Nixon would have dearly loved to silence *The Washington Post* over Watergate, Margaret Thatcher made it easy for Rupert Murdoch, then an Australian national, to get control of *The Times* and she is known to have regretted it. How Bill Clinton would love to issue a *fatwa* to the American press to stop talking about Monica Lewinsky! The whole point is that if he did so Republicans and Democrats in Congress would combine to impeach the President as being of unsound mind. The strength of the American political system would see to that. The reason is simple. It is human nature to be delighted by approval and disappointed by criticism. The whole point is what do you do when you are criticized. In the fully functioning democracies, they have to grin and bear it. In the developing world generally, those in political power try to wreck vengeance and thereby hangs a tale. Until the price of such abuses becomes unacceptably high, we must expect them to continue.

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The year 1998 marks the golden jubilee of the Universal Declaration of Human Rights, quite plainly the most important document to come out of the United Nations this century. As I have tried to show, there is a long way to go to secure absolute and unconditional acceptance of the Universal Declaration—especially Article 19, the bedrock of our liberties. This is important enough. In the practice of my profession of journalism and my duties as editor, I have noted two disturbing developments. Not something done by dictatorships and undemocratic regimes, we know where they stand and we will continue to deal with them as we have done these past 50 years. These threats appear from those who should know better and are thus more difficult to tackle.

The Dangerous Example of the European Convention

Let me come to the point. The first difficulty, and this is not dialectics, is born of hard experience. There is a document called the European Convention on Human Rights and its Article 10 roughly corresponds with Article 19 of the Universal Declaration. But Article 10 in effect allows restrictions and restraints, provided only that they are imposed by law. As a lawyer by training, to me the effort seems to be to think up and define restrictions that can be imposed without violence to the spirit of the Declaration. A wonderful intellectual stimulus which we can do without. My first submission is that the effort is wrong-headed. The European habit of legislating for every contingency may be to blame but we must remember that Article 10 is a persuasive argument even outside Europe. And there the consequences are disastrous. Let me give an example:

Last year in Sri Lanka an editor, Sinha Ratnatunga who edits *The Sunday Times* of Ceylon, was charged with criminal contempt for what was construed as an offense of *lese majeste*. A gossip column—a regular feature of the paper—recounted in two paragraphs of a long piece covering many politicians, how President Chandrika Kumaratunga attended a birthday party of a political colleague, that she was seen to have entered a Colombo hotel by the back entrance and that she left in the early hours of the morning. They threw the whole book at Ratnatunga, they also charged him with an offense under the Press Council Act which curiously was set up by an earlier government to carry out the government's policy towards the press! I attended his trial. In the course of argument, counsel for the state relied on the language of Article 10 of the European Convention. He emphasized that the editor was charged under a specific law. Article 10 seems only to require that restrictions on liberty be part of the law. In the European context it may raise no cavil, I am informed that the body of judgements of the

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European Commission and the European Court of Justice uphold and support press freedoms. My difficulty is the fact that Article 10 has persuasive application elsewhere.

In the event, Sinha Ratnatunga was sentenced to 18 months imprisonment on both counts (the criminal code and the Press Council). The sentences are suspended for seven years. In the Sri Lankan context a suspended sentence does not have to wait for a repeat of the same offense to come into force. If in the next seven years, Ratnatunga is guilty of even a minor traffic offense, the full rigor of this suspended sentence will apply instantly. That another editor of a Sinhala publication charged with the same offense on the same facts was let off may point to other factors but they need not detain us here. I find the requirement that restrictions can only be imposed by law to be no safeguard at all. In Asia, Africa and Latin America laws are passed at the drop of a hat. Extending the argument, human liberty has been advanced by breaking bad laws; if this were not so slavery would still be with us.

My second grievance in respect of Article 10 is quite simple. If Article 19 and the Universal Declaration are indeed universal as I believe they are, why must Europe have its own separate Convention? I have received no satisfactory answer although I have raised the question often enough, the last time in Strasbourg before the European Commission.

No Balance Possible Between Good and Evil

The other development is also worrying. There is a body called the Inter-Action Council composed of former heads of government like President Carter, Lord Callaghan, Helmut Schmidt and other distinguished personages, all very amiable gentlemen. I was invited to two of their meetings, the other journalistic invitee was Flora Lewis, because they said they needed two expert witnesses. They had already formulated a draft Declaration of Human Responsibilities. They thought this up as a counterweight to the Universal Declaration and it has quite harmless clauses about the responsibilities of citizens. Read as a whole it is naive, but in the same class as a provision that one must not beat one's wife every day. I had serious difficulties with the whole concept. I argued that putting forward such a Declaration now would shift the advantage to autarkic regimes everywhere who would say that they always felt that the Universal Declaration was incomplete and unbalanced. You will notice that the current fashion is to be seen to be balanced about everything.

Let me be quite clear; there is no balance that can be struck between good and evil, between good laws and bad or indeed between freedom and restriction of liberty.

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There were objections at the meeting of the Inter-Action Council itself. There was a broad recognition of the fact that it could indeed become counter-productive. At the end of a very long discussion the view was not to press for it on behalf of the Council. However, it was decided that those who favored the new concept would be free individually, to canvass their own governments.

It is time to do some plain speaking. Like Article 10 of the European Convention, the proposal of a Declaration of Human Responsibilities will do nothing to extend and buttress freedoms around the world. Indeed given the hypocrisy and capacity for double talk and double think in large parts of the world, Article 10 and the new proposal of a Declaration of Human Responsibilities will dilute the force of the Universal Declaration. It is a thousand pities that this should happen as we celebrate the golden jubilee of a Declaration that has served us well.

It has not stopped the junta in Nigeria and it will not instantly stop those who have been flouting basic human rights in countries too numerous to mention. But it has kept rogue regimes on the defensive. They must not be allowed to breathe freely simply because of neat and tidy minds, who, let me say out loud, have not had the experience of human rights being trampled upon by those who at the same time swear allegiance to the Universal Declaration and think nothing of the inconsistency. The short point is—if the Universal Declaration is universal why have a regional one and Europe is but a region, albeit an important one. Do we not realize that before we are very much older Asian and African and Latin American Governments will want to draft their own versions—and you can be sure that they will not be liberal.

Goal Is Compliance With 1948 Declaration

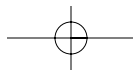
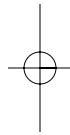
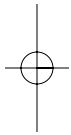
All experience shows that there is a momentum in these matters. The world will not be divided permanently into the free and the not-free separated by a cordon sanitaire. Either the frontiers of liberty and human rights will be expanded in terms of the Universal Declaration or there will be so many regional ones as to submerge and dilute the original Declaration which we all seek to honor. Finally, I have often heard it said that the Americans are satisfied with their First Amendment, the Europeans have their own private convention and the rest of the world can go to hell. They will draft their own declarations and they will be monuments to intolerance, the supremacy of governments and the need for censorship, all of it, of course in the name of national interests and development. The effort in this jubilee year must be to ask for better compliance with the Universal Declaration, not to explore the frontiers

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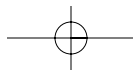
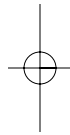
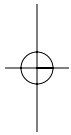
of restrictions that may be imposed. I warn that we are headed in the wrong direction. UNESCO under the distinguished director-general, Federico Mayor, has overcome its past and is leading the way to the brave new world of respect for human rights and press freedoms. They deserve our full support.

In the final analysis, freedom of speech and expression is our professional concern. It is a basic human right available to every citizen, but we who practice it every day on a professional basis surely have a special responsibility. If we do not sound the warning, who will?

Those of us who are fortunate to work in countries where press freedoms are an established fact must spare a thought for those less fortunate than ourselves, who practice their profession at the risk of their jobs, sometimes even at the risk of their lives. In the story of Cain and Abel in the Bible, it will not do to pretend that what happened to Abel is not my problem. In a very real sense, we are all our brothers' keepers!

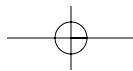
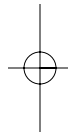
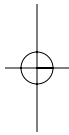


APPENDIX



World Press Freedom Committee Affiliates

American Society of Newspaper Editors
American Women in Radio and Television, Inc.
Asia-Pacific Institute for Broadcasting Development
Asociacion de Diarios Colombianos (Andiarios)
Asociacion de Editores de Diarios Espanoles
Asociacion de Entidades Periodisticas Argentinas
Association of Hungarian Journalists
Associated Press Broadcasters Association
Associated Press Managing Editors Association
Association for Women in Communications
Bloque de Prensa-Venezuela
Bonneville International Corp.
Brazilian Newspaper Association
Canadian Newspaper Association
Central and Eastern European Media Centre-Warsaw
Committee to Protect Journalists
Commonwealth Press Union
Czech Publishers Association
Federation of Australian Radio Broadcasters
Freedom Forum
Freedom House
Hong Kong Journalists Association
Inter American Press Association
International Association of Broadcasting
International Press Institute
International Women's Media Foundation
National Association of Broadcasters
National Conference of Editorial Writers
National Federation of Press Women
National Newspaper Association
Netherlands Association of Newspaper Editors
Newspaper Association of America
Newspaper Guild
Nihon Shinbun Kyokai
North American National Broadcasters Association
Organisation Camerounaise
pour la Liberte de la Presse (OCALIP)
Overseas Press Club
Pacific Islands News Association
Pakistan Press Foundation
Press Foundation of Asia
Radio-Television News Directors Association
Reporters Committee for Freedom of the Press
Sociedad Dominicana de Diarios
Society of Professional Journalists



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