



STATEMENTS AND SPEECHES

INFORMATION DIVISION
DEPARTMENT OF EXTERNAL AFFAIRS
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FREEDOM OF INFORMATION

A statement by Mr. Jean Lesage, Head of the Canadian Delegation to the 13th Session of the Economic and Social Council of the United Nations, made at Geneva on August 13, 1951.

Freedom of information, as a fundamental human right, is deeply imbedded in the tradition of my country. It is an essential part of our democratic heritage; we recognize indeed that it is the very life-blood of our democracy which can only survive on the basis of free public opinion and free discussion. The Canadian people fully recognize the tremendous value of the free flow of information; they enjoy a degree of freedom of information which is second to none, and they guard this freedom with the greatest vigilance.

We realize also that, like every other freedom, freedom of information suffers everywhere if restricted anywhere. In the closely integrated and interdependent world of today, the unhampered flow of information is absolutely essential to real understanding among the peoples of all countries. The Canadian people, for example, while having the widest degree of freedom of information within our own borders, cannot enjoy full freedom of information so long as governments of certain other countries control or restrict the flow of information from within their territories. For that reason, we would welcome international action genuinely designed to promote and protect this fundamental freedom universally.

My Government has shown its interest in the drafting of a convention to that end by sending to the International Conference on Freedom of Information held here in Geneva in 1948 a delegation of able and experienced persons active in the information media in Canada. Our delegation at that conference made an earnest effort to reach agreement with the other delegations on a definition of the principles of freedom of information which would genuinely reflect the aspirations of all those people throughout the world who are concerned to ensure that information may flow freely within each country and between the nations.

Although at that time we found ourselves unable to accept all of the principles enunciated in the draft convention, we cherished a sincere hope that by a process of further consultation, solutions to the outstanding difficulties and disagreements might be found. However, the history of the attempts made since that date to widen the area of agreement shows quite clearly that serious and even irreconcilable differences of

opinion still exist. It was with this in mind that the Canadian Delegation to the Fifth Session of the General Assembly, along with several other delegations, urged that the draft of a detailed convention on freedom of information be deferred until the draft international Covenant on Human Rights was revised and the adequacy of its provisions on Freedom of Information could be determined. However, the General Assembly decided to appoint an ad hoc committee to prepare a draft convention on freedom of information, and called upon ECOSOC to consider the ad hoc committee's report at its Thirteenth Session and, if it thought fit, to call a plenipotentiary conference with a view to the framing and signing of a convention on freedom of information.

Our task at this time is therefore to consider the adequacy of the draft convention prepared by the ad hoc committee, and to decide, in the light of the discussion on this first question, whether or not we should call a plenipotentiary conference.

I would like at this point, Mr. Chairman, to say that our Delegation has the greatest admiration and respect for the devotion and hard work that so many people have put into the thankless and difficult, if not impossible, task of attempting to hammer out a satisfactory draft.

Since the convention is intended to apply to all media of information, my Government thought it desirable to consult with the principal information agencies and associations and other interested bodies in Canada in order that their views might be taken into consideration in determining Canadian policy on the proposed convention. Mr. Chairman, the opinion was unanimous that the draft convention is unsatisfactory, and the consensus of the replies received is that it would tend to restrict rather than promote freedom of information, that the failure of the many attempts made over the last three years to reach agreement internationally on basic principles of freedom of information should be taken as proof of the impossibility for the time being of arriving at a generally acceptable text, and that the entire project should be indefinitely postponed.

I should like to quote, as an example, one answer to our enquiries which we received from one of the leading press associations in Canada. This comment outlines an attitude with which many other groups have expressed agreement: I quote:

"The Convention on Freedom of Information, as drafted by the Ad Hoc Committee appointed by the General Assembly of the United Nations, represents an attempt to assimilate into a single instrument the diverse views of governments ranging from those that maintain complete control over speech and writing to those that permit freedom of expression within very wide limits.

"As such it is bound to some extent to jeopardize press freedom where it most fully exists. It cannot be seriously expected that the proposed Convention would compel an unwilling government to relinquish whatever power it already holds over the press. The adoption of such a compromise convention would tend to restrict press freedom, where it still exists, to some point between the extremes.

"Our Association, while finding no particular fault with the Preamble and Article 1 of the Draft Convention, views with apprehension the implications of the clauses set forth in Article 2. Any qualification of freedom such as those listed in this article could be quoted as justifying restrictive legislation by any State that chose to place its own interpretation under the cloak of the Convention.

"Further, there is no sound reason for this series of 'escape clauses'. In States where there are already laws covering the protection, expressions, obligations and preventions listed as desirable in Article 2, a Convention calling for observance of the general principle of freedom of information could not, unless so provided in the Covenant, be held to override such legislation. In other States (probably there is none) where such laws have been found to be unnecessary, this Article is a direct invitation to enact them without any limitation upon their scope or oppressive potentials. This is a grossly unsuitable feature of a Convention intended to encourage freedom of information.

"In view of the foregoing and in consideration of the fact that several of the other Articles are subject to similar criticism, we feel that the Canadian Government should oppose the adoption of the Convention."

The Answer which I have just quoted may seem to be a harsh judgment, but as I have said already, it represents the consensus of the people who are most directly interested in the matter: that is to say, the editors, the journalists, publicists, people of the radio, cinema, etc.

If my Government had entertained any doubts as to the liberality of the laws which govern the gathering and diffusion of information in my country, or as to the attitude it should take on the draft which is before us, such testimony was a clear deterrent to its approval. The position of my Government is that this draft convention is totally unsatisfactory.

Yesterday, the distinguished delegate of Mexico described the draft convention as a "common denominator between conflicting tendencies". Mr. Chairman, I cannot agree with this description. It is, in my view, no more than a working paper which might lead to a compromise between extremes. The discussions in the Geneva Conference, and especially in the ad hoc committee, have demonstrated that any compromise that could be reached would put the seal of international recognition on a set of principles which falls far short of the standard of freedom which is recognized in many countries, including mine. We believe it would constitute an invitation to governments to use the convention as a justification for imposing undue restrictions.

The distinguished delegate of France yesterday compared the convention to a building of which two wings have already been built and he considers the holding of the conference for the completion of the convention as the third and final wing of the building. I am rather tempted to compare it to a building which already has two storeys but, in my mind, the foundations of the two first storeys are so weak and shaky that the addition of a third floor would bring about the collapse of the whole building.

I would not like to take too much of the time of the

Committee, but I consider it my duty to make a few comments on the individual articles of the draft.

Article 1 which defines the right of freedom of information, met with the general approval of the ad hoc committee. It seems to us a satisfactory definition as applied to most media of information but isn't it inconsistent with the practice prevailing in most countries in regard to broadcasting, which is normally regulated in varying degrees by governments?

Article 2 is designed to set forth the limitations on freedom of information (as defined in Article 1) which governments may properly impose. Throughout the various attempts to draft a convention on freedom of information, the greatest difficulty has been met in trying to arrive at an acceptable formula for the limitations article which would meet the dual requirement of preventing abuse of freedom of information while holding governmental interference to a minimum. Apart from the many and varied opinions on details of the text of a suitable limitations article, two main lines of approach have emerged.

Some countries have urged that the limitations be restricted to a minimum, that they apply to the general fields where governmental control is accepted, and that wherever possible such limitations should operate after the fact as a means of punishing proven offences and not as a prior curb on freedom of expression. They maintain that the method of detailed and specific enumeration, as employed in Article 2 of the present draft convention, is completely impractical, could only too easily lead to censorship, and is an open invitation for the addition of still more objectionable limitations.

Other countries consider that limitations expressed in general terms are open to differing interpretations and could therefore more easily lead to abuse by governmental authority. Their view is that only by enumerating specific limitations in precise terms can freedom of information be properly restrained without being unduly controlled. Persuasive arguments can be adduced in support of both approaches, but we believe that the basic weakness of the specific enumeration method is that it invites additional restrictions from all sides and that a detailed list of limitations could not hope to be comprehensive but at the same time would tend to restrict freedom of information.

In any event, the fact that there exists an apparently irreconcilable divergence of opinion on such a fundamental aspect of the convention gives a sad demonstration of how poor the chances are of working out a generally acceptable text of a convention.

Article 4. The precise meaning of this article is not clear, but it might be interpreted as implying the right of governments to force information agencies to publish corrections. Canadian newspapers and information agencies recognise in practice, if not in law, the right of an individual to have a correction published of any incorrect or misleading statement which relates to him. The exercise in Canada of governmental control in this respect, however, would be an invasion of private rights, and our Supreme Court has already decided in this sense.

Acceptance by Canada of the principle contained

in this Article would undoubtedly be strongly resisted by our press and other information agencies, as I am in a position to prove by quoting two comments made by a press association and a literary association:

(a) One said that:

"Article 4 is ambiguous and over-generalised. Every reputable newspaper in North America accords people the right to reply anyway."

and the other, and I quote:

(b) "Article 4 would also appear to be objectionable on the ground that it refers primarily to a civil right, which should not, in our opinion, be the subject of governmental control."

Article 5 provides for the encouragement by governments of the establishment of non-official organisations (the professional standard-setting bodies) which in their turn would encourage the maintenance of high standards of professional conduct along certain lines laid down in the article. There is a very strong feeling among information agencies in Canada that the matter of professional ethics should be left entirely to those engaged in information activities. The reply of one association was as follows:

"Our Association opposes the intrusion of governments into the field of professional ethics, and strongly favours the exclusion of any Article admitting such control. Article 5 is furthermore objectionable as tending inevitably to promote news agencies for the dissemination of the official point of view."

By way of somewhat personal comment, I might just say that as a Member of Parliament who loyally supports the present Government of Canada, I am often unable to achieve great sympathy for the opinions and views expressed by the Opposition press in our country. However, with the vast majority of my compatriots, I would defend very jealously the rights of that same Opposition press to criticise my Government as it sees fit, and I am tempted to quote the sentence which is erroneously attributed to Voltaire: "I disapprove of what you say, but I will defend to the death your right to say it".

Articles 6 and 7. We believe that articles 6 and 7 relating to questions of trade practices and restrictions, are unnecessary and not relevant to an international convention on freedom of information. Moreover, I am afraid they could be used as escape clauses.

Article 10 states that if there should be any incompatibility between the provisions of the convention on freedom of information and the provisions relating to freedom of information to be included in the Covenant on Human Rights, the provisions of the Covenant shall prevail. As no agreement has yet been reached on the provisions relating to freedom of information to be incorporated in the Covenant on Human Rights, the acceptance of Article 10 of the draft convention on Freedom of Information would, in effect, commit governments to the overriding obligations of the Covenant on Human Rights, the content of which is as yet unknown.

I have commented only on a few of the most important articles, but I believe that I do not have to go further to demonstrate that the present draft is unacceptable to our own interested people in Canada. The draft convention has so many loopholes that it could be used to offer unhappily convenient excuses to governments who are currently, sometimes habitually, applying press controls in varying degree. For other countries like mine, where freedom of information flourishes, it would mean the acceptance in the international field of a limited degree of freedom of information well below the one which we now enjoy. The distinguished delegate of France said that our duty was to consider the draft convention as the starting point of a wide measure of possible agreement. I wish to answer that, for the reasons I have outlined, my Government sees no really effective purpose in the articles of a convention based on the principles outlined in the draft.

Before concluding my remarks, I would like to discuss, in a few words, the calling of a plenipotentiary conference.

It is generally considered that the calling of a plenipotentiary conference for the framing and signing of an international convention should be arranged only when a wide measure of agreement has been reached on the basic principles, and when there is good reason to hope that, with minor polishing, a substantial proportion of the states participating in the conference will authorize their representatives to sign the convention. The progress made over the last three years in reconciling divergent points of view and in widening the area of agreement on the principles of freedom of information to be included in a convention, would seem at present scarcely to justify the hope that a plenipotentiary conference could hammer out a text which would be generally acceptable to the free world. The delegate of France asked what would happen if the Council decided not to call the plenipotentiary conference. He maintained that an unfavourable atmosphere would be created and that we would be further than ever from a convention. I cannot agree with my colleague and I sincerely believe that the best way to make positive progress is to keep on trying to enunciate generally acceptable basic principles of freedom of information.

It has been decided by the General Assembly that the International Covenant on Human Rights should contain an article or articles on freedom of information. These provisions would be basic, enunciating the general principle of the fundamental right of individuals to seek, receive and impart information, and defining the specific areas in which governments may impose limitations on this basic right. An article of this nature in the Covenant on Human Rights would provide a framework within which a detailed convention could be worked out if it were decided that the general provisions of the Covenant were inadequate to give full protection to freedom of information. It would seem logical to reach agreement first on the basic provisions on freedom of information to be included in the Covenant on Human Rights before attempting to draft a separate convention.

ANNEX A

TEXT OF DRAFT CONVENTION ON FREEDOM OF INFORMATION
AS DRAWN UP BY THE COMMITTEE ON THE DRAFT CONVENTION
ON FREEDOM OF INFORMATION

Preamble

The States Parties to this Convention,

Bearing in mind the Charter of the United Nations and the Universal Declaration of Human Rights;

Considering that freedom of expression and the free interchange of information and opinions, both in the national and in the international spheres, are fundamental human rights and essential in the cause of democracy and peace and for the achievement of political, social, cultural and economic progress;

Desiring to co-operate fully with one another to guarantee these freedoms and thereby to promote democratic institutions, friendly relations between States and peoples and the peace and welfare of mankind; and

Recognizing that in order to achieve these aims the media of information should be free from pressure or dictation, and that these media by virtue of their power for influencing public opinion bear a great responsibility to the peoples of the world;

Have accepted the following provisions:

Article 1

Subject to the provisions of this Convention,

(a) Each Contracting State shall secure to its own nationals, and to such of the nationals of every other Contracting State as are lawfully within its territory, freedom to seek, receive and impart without governmental interference and regardless of frontiers information and opinions orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices;

(b) No Contracting State shall regulate or control the use or availability of any of the means of communication referred to in the preceding paragraph in any manner discriminating against any of its own nationals or of the nationals of any other Contracting State as are lawfully within its territory on political grounds or on the basis of their race, sex, language or religion.

Article 2

The exercise of the freedoms referred to in Article 1 carries with it duties and responsibilities. It may therefore be subject to limitations, but only to such as clearly defined by law; applied in accordance with the law and necessary with regard to:

(a) The protection of national security;

(b) Expressions which incite persons to alter by violence the system of government or which promote disorder;

(c) Expressions which incite persons to commit criminal acts;

(d) Expressions which are obscene or which are dangerous for youth and intended for them;

- (e) Expressions which are injurious to the fair conduct of legal proceedings;
- (f) Expressions which infringe literary or artistic rights;
- (g) Expressions about other persons, natural or legal, which defame their reputations;
- (h) Legal obligations resulting from professional, contractual or other legal relationships including disclosure of information received in confidence in a professional or official capacity; or
- (i) The prevention of fraud.

Article 3

Nothing in the present Convention may be interpreted as limiting or derogating from any of the rights and freedoms to which the present Convention refers which may be guaranteed under the laws of any Contracting State or any Conventions to which it is a party.

Article 4

A Contracting State may establish a right of reply or a similar corrective remedy.

Article 5

Each Contracting State shall encourage the establishment and functioning within its territory of one or more non-official organizations of persons employed in the dissemination of information and opinions to the public; so that such persons may thus be encouraged to observe high standards of professional conduct and, in particular, the moral obligation to report facts without prejudice and in their proper context and to make comments without malicious intent, and thereby to:

- (a) Facilitate the solution of the economic, social and humanitarian problems of the world as a whole, by the free exchange of information bearing on them;
- (b) Help to promote respect for human rights and fundamental freedoms without discrimination;
- (c) Help to maintain international peace and security;
- (d) Counteract the dissemination of false or distorted reports which offend the national dignity of peoples or promote hatred or prejudice against other States, or against persons or groups of different race, language, religion or philosophical conviction; or
- (e) Combat any form of propaganda for war.

Article 6

Nothing in the present Convention shall affect the right of any Contracting State to take measures which it deems necessary in order to safeguard its external financial position and balance of payments.

Article 7

Nothing in the present Convention shall affect the right of any Contracting State to take measures which it deems necessary in order:

- (a) To develop and protect its national news enterprises until such time as they are fully developed;
- (b) To prevent restrictive or monopolistic practices or agreements in restraint of the free flow of information and opinions;
- (c) To control international broadcasting originating within its territory;

provided that such measures may not be used as a means of preventing the entry, movement or residence of nationals of other Contracting States engaged in the gathering and transmission of information and opinions for dissemination to the public.

Article 8

Nothing in the present Convention shall prevent a Contracting State from reserving under its legislation to its own nationals the right to edit newspapers or news periodicals produced within its territory, or the right to own or operate telecommunication facilities, including radio broadcasting stations, within its territory.

Article 9

(a) Nothing in the present Convention shall limit the discretion of any Contracting State to refuse entry into its territory to any particular person, or to restrict the period of his residence therein.

(b) The present Convention shall not apply to any national of a Contracting State who, while not otherwise admissible into the territory of another Contracting State, is nevertheless admitted conditionally, in accordance with an agreement between that other Contracting State and the United Nations or a specialized agency thereof, or pursuant to a special arrangement made by that other Contracting State in order to facilitate the entry of such national.

Article 10

As between the Contracting States which become parties to any general agreement on human rights sponsored by the United Nations and containing provisions relating to the freedom of information, in so far as any provision of the general agreement relates to the same subject matter, the two provisions shall whenever possible be treated as complementary so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of incompatibility the provisions of the general agreement shall prevail.

Article 11

(a) In time of war or other public emergency a Contracting State may take measures derogating from its obligations under the present Convention to the extent strictly limited by the exigencies of the situation.

(b) Any Contracting State availing itself of this right of derogation shall promptly inform the Secretary-General of the United Nations of the measures which it has thus adopted and of the reasons therefor. It shall also inform him as and when the measures cease to operate.

Article 12

Any dispute between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiations shall be referred to the International Court of Justice for decision unless the Contracting States agree to another mode of settlement.

Article 13

(a) The present Convention shall be open for signature to all State Members of the United Nations, to every State invited to the United Nations Conference on Freedom of Information held at Geneva in 1948, and to every other State which the General Assembly may declare to be eligible.

(b) The present Convention shall be ratified by the States signatory hereto in conformity with their respective constitutional processes. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 14

(a) The present Convention shall be open for accession to the States referred to in paragraph (a) of Article 13.

(b) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 15

(a) The present Convention shall come into force on the thirtieth day following the date of deposit of the sixth instrument of ratification or accession.

(b) For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force thirty days after the deposit by such State of its instrument of ratification or accession.

Article 16

The provisions of the present Convention shall extend to or be applicable equally to a signatory metropolitan State and to all the territories, be they non-self-governing, trust or colonial territories, which are being administered or governed by such metropolitan State.

Article 17

(a) Any Contracting State may denounce the present Convention by notification of denunciation to the Secretary-General of the United Nations.

(b) Denunciation shall take effect six months after the date of receipt by the Secretary-General of the United Nations of the notification of denunciation.

Article 18

The Secretary-General of the United Nations shall notify the States referred to in paragraph (a) of Article 13 of the following:

- (a) Information received in accordance with Article 11;
- (b) Signature, ratifications and accessions received in accordance with Articles 13 and 14;
- (c) The date upon which the present Convention comes into force in accordance with Article 15;
- (d) Notifications received in accordance with Article 17.

Article 19

(a) The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

(b) The Secretary-General of the United Nations shall transmit a certified copy to each State referred to in paragraph (a) of Article 13.

s/c