

A NEW INTERNATIONAL INFORMATION ORDER: THE DEVELOPING WORLD AND THE FREE FLOW OF INFORMATION CONTROVERSY

I. INTRODUCTION

In many of the economically advanced countries of the world the right to free speech and a free press is considered fundamental. This right is proclaimed, implemented and safeguarded by numerous national constitutions¹ and supplementary legislation. While there are significant exceptions, since 1945 most of the states of the industrialized West have scrupulously tried to achieve the ideal of a free flow of information. This ideal "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 the peace and progress of the world"²

Throughout much of the world, however, this ideal³ is coming under serious attack.⁴ Particularly in those states of Africa, Asia

1. For example, the United States Constitution guarantees that "Congress shall make no law . . . abridging the freedom of speech, or of the press. . . ." U.S. CONST. amend. I. "The Jordanian Constitution guarantees freedom of expression to all citizens. . . ." 33 U.N. ESCOR, Commission on Human Rights, 9 U.N. Doc. E/CN.4/1214/Add. 1 (1976). Somalia recognizes that "it is a well accepted principle of socialist democracy that people have a right to seek and impart information and ideas." 33 U.N. ESCOR, Commission on Human Rights, 8 U.N. Doc. E/CN.4/1214/Add. 3 (1976).

2. G.A. Res. 59, U.N. Doc. A/64/Add. 1, at 95 (1946).

3. "To many in the Third World, 'free flow' is a self-serving concept devised in 1948 by the West, and particularly by the two U.S. news agencies, to ensure their domination of world news channels." Tatarian, *News Flow in the Third World: An Overview*, in *THE THIRD WORLD AND PRESS FREEDOM* 1, 12 (P. Horton ed. 1978).

4. The complaint of Biola Olasope, Director of News and Current Affairs for the Nigerian Broadcasting Corporation, is not an isolated one among developing countries, but rather reflects the widespread dissatisfaction with the contemporary organizational imbalance of news distribution:

The present system of gathering and distributing news is patently unsatisfactory. It does not allow the collection and distribution of a great proportion of the news available in the world. It is lopsided in its operation, concentrating on the developed countries to the detriment of the developing ones, thereby creating a gross and unjustifiable imbalance in the flow of news. The system is also entirely owned and controlled by the advanced countries who use it in different ways to further their own political and economic interests.

Olasope, *The Nonaligned News Agencies Pool and the Free Flow of Meaningful News: An African Viewpoint*, in *THE THIRD WORLD AND PRESS FREEDOM* 162, 169 (P. Horton ed. 1978).

and Latin America which comprise the so-called Third World, the entire process of receiving and imparting information is taking on a new meaning and importance. The traditional Western concept of these rights as an essential foundation for the individual's liberty is being de-emphasized. Instead, many governments now regard information as a resource⁵ or tool to be carefully manipulated in the process of state-building.⁶

Thus, the governments of developing countries are becoming increasingly sensitive to what they regard as critical or unflattering news stories in either the foreign or domestic press.⁷ Accordingly, they are reluctant to allow any information from external sources to be disseminated within their borders if it in any way appears to undermine the government's efforts to create a modern, cohesive national state.⁸

5. It is a "universally acknowledged principle that information is an essential part of a nation's resources and access to it is one of the basic human rights." Final Report, UNESCO Intergovernmental Conference on the Planning of National Documentation, Library and Archives Infrastructures, Paris, September 23-27, 1974, Recommendation 12 (1974).

6. The attitude of the Somali government reflects that of many Third World states: The mass media in our country, as in all other socialist countries, is thus a major instrument of furthering the just and equitable principles of socialism. . . . We see the primary functions of the media as:

- (a) Assisting in the national guidance and raising the political consciousness of the masses;
- (b) Providing information about overseas, national and regional events;
- (c) Assisting in the education of the people.

Reports on Freedom of Information for the Period 1 July 1970 thru 30 June 1975, Received from Governments under Economic and Social Council Resolution 1074C (XXXIX), Somalia. 33 U.N. ESCOR, Commission on Human Rights, 8 U.N. Doc. E/CN.4/1214/Add. 3 (1976). A similar attitude is embodied in many national constitutions such as the following: "The law shall regulate the practice of journalism, taking into account that the primary object of journalism is the defense of the national interests. . . ." *Constitution* art. 141, para. 10 (Ecuador), reprinted in 5 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds. 1977).

7. This letter of protest by Abdullahi A. Addou, Somalia's Ambassador to the United States, shows the frustration of officials in the developing world who feel that the free flow of information doctrine has been abused by Western news media:

I am compelled to protest to you in the strongest possible terms about the continued, unwarranted and hostile campaign engaged against my country by your editorial page.

. . . .

The Somali government has at all times granted cordial treatment to your correspondents visiting Somalia, both in facilitating entry visas and providing cooperative assistance in carrying out their mission as reporters. It is, to say the least, very unkind on the part of your paper that in return we are compensated in this manner.

Washington Post, Nov. 19, 1977, at A18, col. 3.

8. For example, the Constitution of Bangladesh guarantees freedom of speech and expression and freedom of the press "[s]ubject to any reasonable restrictions imposed by

This Note will examine the basis in international law for a doctrine of the free flow of information and for the recent attempts of many developing countries to circumvent or alter this doctrine both domestically and in the international forum.⁹

II. THE DOCTRINE OF THE FREE FLOW OF INFORMATION

A. Customary Law

Customary international law is that which "emerges from the practice of states and their acceptance of such practice as binding."¹⁰ In this sense, the ideal of freedom of information has certainly achieved the status of customary international law.¹¹ Virtually all countries acknowledge in some way the principle of freedom of information.¹² The most notable example of this widespread acceptance is found in the Universal Declaration of Human Rights,¹³ which in part guarantees all people the right "to seek, receive and impart information and ideas through any media and regardless of frontiers."¹⁴

States vary widely, however, in the manner in which they allow this right to be exercised by their citizens.

All governments seem to agree that freedom of information is a fundamental right, that peoples should be fully informed, that free interchange of information and opinion is apt to promote the peace and welfare of mankind, and that media of information should be made to avoid false or distorted reports or the

law in the interests of the security of the State. . . . BANGLADESH CONST. art. 39, para. 2, reprinted in 2 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds. 1979).

9. For a journalist's viewpoint on these recent attempts, see generally S. KELLY, ACCESS DENIED: THE POLITICS OF PRESS CENSORSHIP (The Washington Papers, vol. VI, no. 55, 1978).

10. Gross, *International Law Aspects of the Freedom of Information and the Right to Communicate*, in THE THIRD WORLD AND PRESS FREEDOM 55 (P. Horton ed. 1978).

11. Buergenthal, *The Right to Receive Information Across National Boundaries*, in CONTROL OF THE DIRECT BROADCAST SATELLITE: VALUES IN CONFLICT 73 (The Aspen Institute Program on Communication and Society, Series on Communications, 1974).

12. For example, "[e]very citizen shall have freedom of speech, expression and publication. . . ." BURMA CONST. art. 157. "Freedom of the press, printing, publication, and the information media is guaranteed." EGYPT CONST. art. 48. "Citizens have freedom of speech and of the press in keeping with the objectives of socialist society." CUBA CONST. art. 52, reprinted in 2-5 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds. 1979).

13. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

14. *Id.* at 79.

dissemination of opinions inciting to war or hatred between nations. As regards, however, the means of achieving a situation within nations and amongst them, characterized by a free and abundant flow of truthful information and by useful interchange of opinion, there is no general agreement. The concept of freedom of information as a legal concept is strongly controversial.¹⁵

In truth, international practice often fails to measure up to the ideal of complete freedom of information, an indication that most states believe that this right is not absolute and therefore may be restricted.¹⁶ Thus, an international law of freedom of information cannot rely solely on the practice of states, largely because there is such immense variation in this practice. For a firmer foundation, it is necessary to rely on multilateral treaties and covenants.

*B. International Conventions*¹⁷

The most significant international conventions dealing with the free flow of information are the United Nations Charter, the Universal Declaration of Human Rights,¹⁸ and the International Covenant on Civil and Political Rights.¹⁹ The Charter requires United Nations members to promote and encourage respect for human rights and fundamental freedoms.²⁰ It has been argued that this obligation arises only when a member state enters into an agreement recognizing a particular right and undertakes to respect it.²¹ Since the Charter itself does not specify any human rights or fundamental freedoms, it is difficult to view it standing alone as a guarantee of a specific right such as freedom of information.

15. Dr. Hilding Eek, Report on Developments in the Field of Freedom of Information since 1954. 31 U.N. ESCOR, Annex (Agenda Item 10, part II) at 9, U.N. Doc. E/3443 (1961).

16. Buergenthal, *supra* note 11, at 73.

17. Such major international agreements as the European Convention on Human Rights and the Conference on Security and Cooperation in Europe: Final Act (commonly known as the Helsinki Accords) will not be discussed here, since the focus of this Note is on information problems in developing countries.

18. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

19. G.A. Res 2200, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966).

20. One of the purposes of the United Nations is "[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all. . . ." U.N. CHARTER art. 1, para. 3.

21. L. GOODRICH, E. HAMBRO & A. SIMONS, CHARTER OF THE UNITED NATIONS 34-35 (3rd rev. ed. 1969).

This deficiency is remedied in large part by the Universal Declaration of Human Rights.²² Although the Declaration is legally non-binding,²³ it has come to be accepted as an authoritative interpretation of the Charter.²⁴ The Declaration provides that "[e]veryone 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."²⁵

Almost precisely the same language is used in the International Covenant on Civil and Political Rights.²⁶ Unlike the Declaration, however, the Covenant is a legally binding treaty for those States which are parties to it.²⁷ As such, it undeniably brings freedom of information into the context of formal international law.

The Covenant does not provide for absolute freedom of infor-

22. G.A. Res. 217, U.N. Doc A/810, at 71 (1948).

23. *But see* J. Ammoun's separate opinion in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* [1971] I.C.J. 10:

Although the affirmations of the Declaration are not binding *qua* international convention within the meaning of Article 38, paragraph 1(a) of the Statute of the Court, they can bind States on the basis of custom within the meaning of paragraph 1(b) of the same Article whether because they constituted a codification of customary law . . . or because they have acquired the force of custom through a general practice accepted as law, in the words of Article 38, paragraph 1(b) of the Statute.

Id. at 76.

24. I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 553-54 (2nd ed. 1973).

25. G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

26. International Covenant on Civil and Political Rights, *opened for signature* 19 December 1966, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc. A/6316 (1966), *entered into force* 23 March 1976.

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

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

Id. at art. 19.

27. Those states which are parties to the Covenant as of 23 March 1976 are: Barbados, Bulgaria, Byelorussian SSR, Canada, Chile, Colombia, Costa Rica, Cyprus, Czechoslovakia, Denmark, Ecuador, Finland, German Democratic Republic, Federal Republic of Germany, Hungary, Iran, Iraq, Jamaica, Jordan, Kenya, Lebanon, Libyan Arab Republic, Madagascar, Mali, Mauritius, Mongolia, Norway, Romania, Rwanda, Surinam, Sweden, Syrian Arab Republic, Tunisia, Ukrainian SSR, USSR, United Kingdom, United Republic of Tanzania, Uruguay, Yugoslavia, and Zaire. *Multilateral Treaties in Respect of Which the Secretary-General Performs Depositary Functions* 101-02, U.N. Doc. ST/LEG/SER.D/10 (1976).

mation. States are permitted to impose restrictions for reasons such as national security or public order.²⁸ These restrictive concepts pose the most serious challenge to an international ideal of the free flow of information. If states abuse them or interpret solely for their own political advantage, the right to freedom of information loses all substance.

C. State Sovereignty and Restrictions on Freedom of Information

Sovereignty²⁹ constitutes the most fundamental attribute of an independent state. It can be defined in several ways. In one sense, sovereignty consists of "a jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there . . ."³⁰ An equally valid definition is that condition "by which is meant that the State has over it no other authority than that of international law."³¹

The United Nations Charter proclaims the "principle of the sovereign equality of all its Members."³² This sovereign equality,³³

28. International Covenant on Civil and Political Rights, *opened for signature* 19 December 1966, G.A. Res. 2200, 21 U.N. GAOR, Supp. (No. 16) 52, U.N. Doc A/6316 (1966), *entered into force* 23 March 1976.

The exercise of the rights provided for in paragraph 2 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 of reputations of others;

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

Id. at art. 19(3).

29. See generally I. BROWNIE, *supra* note 24, at 280-90.

30. *Id.* at 280. For an almost identical definition, see *Campania Naviera Vascongado v. Cristina S.S.*, [1938] A.C. 485, 496-97.

31. Customs Regime between Germany and Austria, [1931] P.C.I.J., ser. A/B, No. 41, 57 (sep. op. Anzilotti).

32. U.N. CHARTER art. 2, para. 1.

33. Although there is no firm consensus on the definition of "sovereign equality" within the context of the U.N. Charter, it may be said to include the following elements:

(1) that states are juridically equal;

(2) that each state enjoys the rights inherent in full sovereignty;

(3) that the personality of the state is respected, as well as its territorial integrity and political independence;

(4) that the state should, under international order, comply faithfully with its international duties and obligations.

6 U.N.C.I.O. Docs. 457 (1945), *reprinted in* L. GOODRICH, E. HAMBRO & A. SIMONS, *supra* note 21, at 37.

coupled with the principle of nonintervention,³⁴ makes it difficult for one state to claim a violation of international law when another state restricts the free flow of information from (or within) the latter's territory. For example, if the government of a developing nation should expel a journalist working for a British newspaper, the British government would be unable to challenge the legality of the action if the former government claimed the action was in the interests of preserving national security or public order.

In the current legal framework, abuses of the legitimate restrictions clearly can (and do) occur.³⁵ By expelling foreign journalists or outlawing news agency transmissions, a government may seriously disrupt, or even stop, the free flow of information. Yet, as long as the legal principle of freedom of information is acknowledged by the international community, these disruptions can be regarded as aberrations from that recognized principle, and not as evidence of a new, more restrictive standard of information flow. However, the developing world is currently moving towards a new concept of the role of information³⁶ and the legal regime which should govern it.³⁷ If this movement continues unabated, it

34. "The corollary of the independence and equality of states is the duty on the part of states to refrain from intervention in the internal or external affairs of other states." I. BROWNIE, *supra* note 24, at 284.

35. One of the most blatant examples of such abuse to occur recently involves the case of Michael Goldsmith of the Associated Press. While visiting the Central African Empire in July 1977, Goldsmith and another American reporter were arrested, accused of being spies, and jailed. Goldsmith was severely beaten and imprisoned for a month before being expelled from the country. S. KELLY, *supra* note 9, at 14-15.

36. This growing trend is epitomized by the attitude of the Conference of Non-Aligned Countries.

Non-aligned countries meeting for the first time at the high political level of Ministers of Information have taken note of the persistent and serious imbalance in the current global information situation and its adverse effects on them, have recognized the need to liberate their information and mass media from the colonial legacy and have expressed their collective determination to rectify this situation

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Specialized Ministerial Conference of Non-Aligned Countries: Ministerial Conference on the Press Agencies Pool, July 8-13, 1976, New Delhi, 1. Declaration, Doc. A/7 of 13 July 1976, reprinted in O. JANKOWITSCH & K. SAUVANT, *THE THIRD WORLD WITHOUT SUPERPOWERS* 1553 (1978).

37. Some of the fundamental reasons for this development are succinctly expressed in this summary of Third World policy interests.

Operating on a world-wide scale, some information agencies—most of which have their headquarters in one of the industrialized countries—have, by reason of their equipment and capital, acquired a position of strength which probably

will have the effect of undermining the legal standard of a free flow of information.

III. NEWS MEDIA IN THE DEVELOPING WORLD

A. *The Role of the Western News Media*

The Western news agencies of UPI, AP, Agence France-Presse, and Reuters are today the major source of foreign news to the world's developing countries.³⁸ They are also the world's primary source of information about events within the developing countries. This situation has led to what many of the governments of these countries regard as an imbalance in the flow of information.³⁹

The international news services often represent the developing countries in what the latter consider to be an unsympathetic and biased light. Officials in these countries contend that Western news media transmit sensationalized and distorted information which highlights the shortcomings of Third World states and emphasizes their political, social and economic problems.⁴⁰ On the

enables them to offer better services but also leads them to convey one-way information reflecting the point of view of those countries, and which, above all, allows them to dominate the information market to an extent that borders on cultural aggression. . . . This de facto monopoly is opposed to the establishment of a new international economic order.

UNITED NATIONS EDUCATIONAL SCIENTIFIC AND CULTURAL ORGANIZATION, MOVING TOWARDS CHANGE 91 (1976).

38. It is, for example, widely taken as fact among journalists with international experience that so far as their foreign operations are concerned in the Third World countries, AFP and Reuters are dominant in Africa, and UPI and AP in Latin America. There is nothing as clear-cut about Asia. All four are active there, but on balance Reuters . . . is likely to be ahead of the field in its news distributions operations.

Tatarian, *supra* note 3, at 35.

39. Fifth Conference of Heads of State or Government of Non-Aligned Countries, 31 U.N. GAOR (197th plen. mtg.) 43, U.N. Doc. NAC/CONF.5/S.2 (1976).

Non-aligned countries noted with concern the vast and ever growing gap between communication capacities in non-aligned countries and in the advanced countries which is a legacy of their colonial past. This has created a situation of dependence and domination in which the majority of countries are reduced to being passive recipients of biased, inadequate and distorted information.

Id.

40. "There is an acknowledged tendency among Western media, including the news agencies, to devote the greatest attention to the Third World in times of disaster, crisis, and confrontation. Correspondents are airlifted in to cope with the emergency and depart when it is over. Coverage then reverts to the status quo ante, which means, in many places, little if any coverage at all." Tatarian, *supra* note 3, at 42.

other hand, the information which these agencies bring into such countries is often criticized as being oriented toward Western interests and values.⁴¹ Such information is, at best, irrelevant to populations of the Third World. At worst, it can be disruptive, fostering economic and social expectations which Third World governments are not yet capable of satisfying.

B. *The New International Economic Order*

During the post-World War II period large numbers of Third World states passed from colonial status to political independence.⁴² The speed of this process raised hopes in these countries that an equally rapid process of economic development would bring them into an equilibrium with the industrialized West.⁴³ These expectations have not been met. In fact, the developing countries see their position steadily worsening in relation to economically advanced countries.⁴⁴

The developing world's response to this problem is a call for a New International Economic Order (NIEO).⁴⁵ The NIEO would work to distribute the world's wealth and resources more equitably among all nations. Among other goals, it calls for the reformation of the international monetary system,⁴⁶ the transfer of technology from developed to developing countries,⁴⁷ the indexing of prices for raw materials to the prices of manufactured goods,⁴⁸

41. Schiller, *Freedom From the "Free Flow,"* 24 J. OF COMMUNICATIONS, 110-112 (1974).

42. Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, Sixth Special Sess., U.N. GAOR, Supp. (No. 1) 3, U.N. Doc. A/9559 (1974). "The greatest and most significant achievement during the last decades has been the independence from colonial and alien domination of a large number of peoples and nations which has enabled them to become members of the community of free peoples." *Id.*

43. Raman, *Transnational Corporations, International Law, and the New International Economic Order*, 6 SYR. J. INT'L L. & COM. 17, 22-23 (1978).

44. Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, Sixth Special Sess., U.N. GAOR, Supp. (No. 1) 3, U.N. Doc. A/9559 (1974). "It has proved impossible to achieve an even and balanced development of the international community under the existing economic order. The gap between the developed and developing countries continues to widen in a system . . . which perpetuates inequality." *Id.*

45. *Id.*

46. Programme of Action on the Establishment of a New International Economic Order, G.A. Res. 3202, Sixth Special Sess., U.N. GAOR, Supp. (No. 1) 5, 7, U.N. Doc. A/9559 (1974).

47. *Id.* at 8.

48. *Id.* at 5-6.

and the recognition of the permanent sovereignty of developing states over all their resources.⁴⁹

Among the resources which many states now claim to control completely is information, thus giving rise to a new phrase: "information sovereignty."⁵⁰ As a corollary to the NIEO, developing countries see information as a national resource over which they have sovereign rights and which should be utilized like any other resource for the process of modernization and development.⁵¹ Although the information controversy has distinct roots of its own, it has gathered a new impetus through its frequent association (since 1974) with the NIEO.

IV. UNESCO AND THE BALANCED FLOW OF INFORMATION

A. *The Freedom of Information Debate in the United Nations*

Since its inception, the General Assembly of the United Nations has tried unsuccessfully to bring out a draft convention on freedom of information.⁵² Recently, however, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has become the primary international forum for the discussion of information policies.⁵³ It has sponsored numerous research programs on mass media and their political, economic, cultural and social functions.⁵⁴ Although such activities definitely fall within UNESCO's mandate,⁵⁵ the manner in which they are conducted suggests that the organization sees itself as the sponsor of a new

49. *Id.* at 9.

50. "Sovereignty comes into play when governments try to deny news information to their own citizens, or to people in other countries. . . . They try to stop the flow of news into the country by controlling the distribution of international wire services, restricting the importation of foreign news publications, or jamming foreign news broadcasts." S. KELLY, *supra* note 9, at 7.

51. See *supra* notes 3 and 5.

52. For the history of these efforts during the period 1946-1967, see 13 M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 903 (1968).

53. For a brief account of UNESCO's activities in the field of information and communications policies, see Naesselund, *UNESCO and the Press in the Third World*, in *THE THIRD WORLD AND PRESS FREEDOM* 210 (P. Horton ed. 1978). For a general overview of the contributions of UNESCO to the protection of human rights in the context of international law, see Marks, *UNESCO and Human Rights: The Implementation of Rights Relating to Education, Science, Culture, and Communication*, 13 *TEX. INT'L L. J.* 35 (1977).

54. Proposals for an International Programme of Communications Research, UNESCO Doc. COM/MD/20 (1971).

55. Constitution of the United Nations Educational, Scientific and Cultural Organization, *opened for signature* November 16, 1945, 61 Stat. 2495, T.I.A.S. No. 1580, 4 U.N.T.S.

order of information designed to complement the assumptions and goals of the NIEO.⁵⁶

UNESCO has called several conferences specifically to deal with problems of communication and information in the developing world.⁵⁷ These meetings have been largely dominated by the developing countries and the reports coming out of them reflect a growing hostility for what was described as the "cultural aggression" and "information imperialism" of Western news media.⁵⁸

B. *The Non-Aligned News Agencies Pool*

Developing countries have tacitly expressed their dissatisfaction with Western news media by attempting to form international news services of their own. India proclaimed its intention to build a worldwide organization around its own national news service, Samachar.⁵⁹ In 1977, Libya announced plans to form an Arab-African News Agency to serve Arab and African countries.⁶⁰ By far the most ambitious of these Third World media networks is the Non-Aligned News Agencies Pool (NANAP).⁶¹

275 [hereinafter cited as UNESCO CONST.] The Organization shall "collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image." *Id.* at art. I, para. 2(a).

56. Report of the Director-General, UNESCO Gen. Conf. Docs., UNESCO Doc. 20 C/3, at 51 (1978). "The highly political aspect of information and the problems posed by the virtual monopoly of the major news agencies in international news services and the dominance of Western countries in the marketing of programme materials, create divergence of interests between developing countries and industrialized countries producing the bulk of the information at present flowing in the world." *Id.* For the goals of NIEO, see generally Programme of Action on the Establishment of a New International Economic Order, G.A. Res. 3202, Sixth Special Sess., U.N. GAOR, Supp. (No. 1) 5, U.N. Doc. A/9559 (1974).

57. Some of the major conferences were Meeting of Experts on the Development of News Agencies in Africa, Tunis, April 1-6, 1963; Meeting of Experts on the Development of News Exchange in Latin America, Quito, June 24-30, 1975; intergovernmental Conference on Communication Policies in Latin America and the Caribbean, San Jose, Costa Rica, July 12-21, 1976.

58. Final Report, Intergovernmental Conference on Communication Policies in Latin America and the Caribbean, San Jose, Costa Rica, July 12-21, 1976, UNESCO Doc. COM/MD/38 (1976). "Specifically, some of the delegates expressed the view that the communications media . . . belonging to the industrialized nations, had contributed a sort of cultural aggression which kept, or tried to keep, the developing countries in a state of dependence with respect to the nations where economic and political power was concentrated." *Id.*, reprinted in Tatarian, *supra* note 3, at 27-28.

59. *Id.* at 20.

60. L. SUSSMAN, MASS NEWS MEDIA AND THE THIRD WORLD CHALLENGE 6, 7 (The Washington Papers, vol. V., no. 46, 1977).

61. Specialized Ministerial Conference of Non-Aligned Countries: Ministerial Conference on the Press Agencies Pool, July 8-13, 1976, New Delhi, Draft Constitution, Doc.

Founded in 1975,⁶² NANAP operates out of the offices of Tanjug, the Yugoslav national news agency, in Belgrade. By January 1977, more than forty national news agencies were using its services.⁶³ Most of the news stories carried in the first years of operation have protocol features with little hard news value, but the officers of NANAP claim that as the system develops, it will become competitive with the large Western agencies.⁶⁴

NANAP has a semi-official status in the Third World. Its creation was specifically called for by the Fourth Conference of Heads of State or Government of Non-Aligned Countries.⁶⁵ Its constitution was approved by a resolution of the Fifth Conference in 1976.⁶⁶ It also has UNESCO sanction. A resolution passed at UNESCO's nineteenth General Conference invited the Director-General of the organization to pay "special attention" to NANAP's activities.⁶⁷ If NANAP and its member agencies embrace the ideal of a "balanced flow"⁶⁸ of news rather than the traditional "free flow"⁶⁹ ideal, such acceptance would be a significant contribution

A/10 of 14 July 1976. "The Press Agencies Pool of the Non-Aligned Countries agreed upon by the non-aligned countries is intended to achieve the broad and free circulation among themselves of news . . . about each other, and also provide objective and authentic information relating to non-aligned countries to the rest of the world." *Id.*, reprinted in O. JANKOWITSCH & K. SAUVANT, *supra* note 36, at 1563.

62. NANAP began functioning informally in January, 1975, although it was not officially constituted until August, 1976.

63. Ivacic, *Toward a Freer and Multidimensional Flow of Information*, in *THE THIRD WORLD AND PRESS FREEDOM* 135, 145 (P. Horton ed. 1978).

64. Spasic, *News Agencies Pool of the Non-Aligned Countries*, *The Democratic Journalist*, May, 1977, 7-8.

65. Fourth Conference of Heads of State or Government of Non-Aligned Countries, Algiers, September 5-9, 1973, Action Programme for Economic Cooperation, art. 13., reprinted in O. JANKOWITSCH & K. SAUVANT, *supra* note 36, at 189.

66. Fifth Conference of Heads of State or Government of Non-Aligned Countries, 31 U.N. GAOR (1977th plen. mtg.), U.N. Doc. NAC/CONF.5/S/RES. 16 (1976).

67. UNESCO Res. 4.142, 19 UNESCO Gen. Conf. Rec., UNESCO Doc. 19 C/Resolutions, at 53 (1976).

68. "Balanced flow" may be defined as a system by which the information flow into and out of a country is regulated by the government both as to content and quantity. The government would strive to "export" information which it believes the world should have concerning its country. It would "import" information which it deemed useful and interesting to its own citizens. In order to achieve the optimum balance, the government would have to monopolize the information market. The potential for government censorship in such a system is great.

69. "Free flow" may be defined in terms of a market economy. Both state and private news agencies gather and transmit information as a commodity. They only transmit that information which they believe can be profitably sold to an audience. In such a system, less developed and less efficient agencies may be unable to compete for the total audience and

to a new legal standard of freedom of information.

C. UNESCO's Declaration on the Mass Media

As it has become the primary international forum for the discussion of issues bearing on freedom of information, UNESCO has attempted to produce a comprehensive statement expressing the organization's views on the role of information in the contemporary world.⁷⁰ In the aftermath of the General Assembly's passage of the Declaration on the Establishment of a New International Economic Order (the Declaration),⁷¹ a draft resolution⁷² was proposed at UNESCO's 1976 General Conference in Nairobi. Sponsored by the Soviet Union and supported by a large number of developing countries, it proposed complete government control of information media. Article XII of the draft decrees that "[s]tates are responsible for the activities in the international sphere of all mass media under their jurisdiction."⁷³ Although the legal theories of sovereignty and state responsibility provide some basis for this language, the implications of this article go far beyond the level of state control which those theories have customarily been used to support.

Through the opposition of the United States⁷⁴ and other countries, the Soviet draft was returned to the drafting committee for further negotiation. At UNESCO's next biennial conference in 1978, a more moderate version of the draft was passed.⁷⁵ This later draft removed any references to direct government control of

may cease functioning. This could leave certain segments of the audience without any news source closely attuned to their needs and interests.

70. In 1979, the then Director-General of UNESCO, René Maheu, made the first presentation of a strategy directed at the content of information. Report by the Director-General and Proposals for Long-Term Outline Plan, UNESCO Gen. Conf. Rec., UNESCO Doc. 16 C/4 (1970).

71. G.A. Res. 3201, Sixth Special Sess., U.N. GAOR, Supp. (No. 1) 3, U.N. Doc. A/9559 (1974).

72. A Draft Declaration on Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and Combating War Propaganda, Racism and Apartheid. 19 UNESCO Gen. Conf. Rec., UNESCO Doc. 19 C/Proceedings, at 91 (1976).

73. *Id.*, reprinted in Tatarian, *supra* note 3, at 18.

74. 19 UNESCO Gen. Conf. Rec., UNESCO Doc. 19 C/Proceedings, Annex II, at 458 (1976).

75. Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War. UNESCO Res. 4/9.3/2, 20 UNESCO Gen. Conf. Res., UNESCO Doc. 20 C/Resolutions, at 100-04 (1978).

mass media: "Read in its entirety . . . the text appears to represent a balance between the ideal of freedom of the press and the special concerns of the developing countries for greater control over the elements which appear to them to be retarding their development."⁷⁶

The Declaration places itself firmly within the context of Third World demands for an alteration of existing world relationships.⁷⁷ The goals proclaimed in the Declaration—the strengthening of peace and international understanding, the promotion of human rights, and opposition to racialism, apartheid, and the incitement to war⁷⁸—are unobjectionable in themselves. In the United Nations, however, these phrases have often been used to reflect an anti-Western stance.⁷⁹

While reaffirming many of the traditional expressions of freedom of information,⁸⁰ the Declaration also casts the responsibilities of information media in a new light. Article II states, "it is important that the mass media be responsive to concerns of peoples and individuals. . . ."⁸¹ If indeed the media has a duty to be responsive to "peoples," it is difficult to see how this duty will be enforced other than through government supervision. Such an information regime would almost inevitably lead to government censorship and control of information. Although most of the provisions are not couched in terms of the positive duties which the media owe to their audiences, the language nevertheless strikes an imperative tone in describing how information must function in a world of justice and equity.⁸²

76. Gordon, *Current Legal Developments*, 13 INTL LAW. 388 (1979).

77. Article VII of the Declaration ties the dissemination of information "to the establishment of a more just and equitable international economic order." UNESCO Res. 4/9.3/2, 20 UNESCO Gen. Conf. Rec., UNESCO Doc. 20 C/Resolutions, at 103 (1978).

78. *Id.*

79. Gordon, *supra* note 76, at 388.

80. Article II reads in part, "The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding." UNESCO Res. 4/9.3/2, 20 UNESCO Gen. Conf. Rec., UNESCO Doc. 20 C/Resolutions, at 102 (1978).

81. *Id.*

82. Article VI, "For the establishment of a new equilibrium and greater reciprocity in the flow of information, which will be inductive to the institution of a just and lasting peace and to the economic and political independence of the developing countries, it is necessary to correct the inequalities in the flow of information to and from developing countries. . . ." *Id.* at 103.

The Declaration has no legally binding force.⁸³ Yet it does set an international standard of the goals of social utility to which news media should aspire. It also indicates, indirectly at least, that the content and operation of the information flow should not be determined by the media themselves but by their audiences. If this implication of the Declaration gains acceptance in the international community, it will be a radical departure from the hitherto acknowledged ideal of a free and unfettered flow of information.

V. FREE FLOW VERSUS BALANCED FLOW

The conflict over the legal regime of information flow is essentially a conflict of perceptions. The developing countries see the dispute in terms of national sovereignty and "cultural protectionism."⁸⁴ They strive to establish national identities and viable political and economic systems which can stand on a level with those of the older, advanced states.⁸⁵ To this end, they seek international recognition of the right of every state to regulate all influences on its citizens. This right would exceed the traditional legal concept of national sovereignty which accords a state exclusive jurisdiction over its own territory and citizens.⁸⁶ Indeed it would extend so far as to give a state complete authority over any information crossing its borders.⁸⁷

83. Gross, *supra* note 10, at 72.

84. See generally Hargrove, *International Law and the Case for Cultural Protectionism*, in CONTROL OF THE DIRECT BROADCAST SATELLITE: VALUES IN CONFLICT 85 (The Aspen Institute Program on Communication and Society, Series on Communications, 1974).

85. Fifth Conference of Heads of State or Government of Non-Aligned Countries, Political Declaration, 31 U.N. GAOR (197th plen. mtg.) 43, U.N. Doc. NAC/CONF.5/S.2 (1976).

The emancipation and development of national information media is an integral part of the over-all struggle for political, economic and social independence for a large majority of the peoples of the world who should not be denied the right to inform and to be informed objectively and correctly. Self-reliance in sources of information is as important as technological self-reliance, since dependence in the field of information in turn retards the very achievement of political and economic growth.

Id.

86. See I. BROWNIE, *supra* note 24, at 280.

87. A distinction should be drawn between information which is merely critical or unfavorable to a government and information which is deliberate propaganda aimed at subverting a government. For an analysis of how the latter fits into a free flow of information regime, see Note, *Radio Propaganda in the Contexts of International Regulation and the Free Flow of Information as a Human Right*, 5 BROOKLYN J. INT'L L. 154 (1979); Comment, *Direct Broadcast Satellites and Freedom of Speech*, 4 CAL. W. INT'L L. J. 374 (1974).

The advanced countries tend to see this conflict in terms of individual human rights. They claim that an individual should be able to gain access to information as he sees fit and not merely as it suits some aspect of a government's development policy.⁸⁸ Essentially, they argue that access to information is a right pertaining to individuals, not to states.

Historically, the "soft" law such as U.N. General Assembly and UNESCO resolutions have favored the ideal of the free flow of information. More recently, and particularly since 1974, the Third World members of these bodies have tempered this adherence to the ideal with demands for a greater role for the state in controlling information flow. Undoubtedly state practice reflects the latter condition in much of the world, and the ideal is honored more in the breach than in the observance.

"The question is . . . to what extent is it in the international community interest to sanction such national claims and perhaps lend assistance to them through international arrangements?"⁸⁹ The world community should vigorously oppose any attempts to lend legal substance to such practice whether by international convention or by the evolution of a customary law of state control of information. Such a development could only serve to isolate peoples from one another, making communication possible only through government ministries. The future of the individual's right to freely receive and impart information, and indeed all human rights, depends on the willingness of all countries to accept that their citizens have rights arising out of a greater context than the state. It is the duty of the international community to be the guarantor of these rights.

Thomas R. Wolfe

88. In a speech opposing the Soviet draft resolution in 1976, the American delegate to UNESCO expressed the Western attitude toward news media. "[T]he mass media, far from being a tool of the State, are a counter-balancing force exercising a restraining influence to prevent the abuse of power by the State. . . ." 19 UNESCO Gen. Conf. Rec., UNESCO Doc. 19 C/Proceedings, Annex II, at 458 (1976).

89. Hargrove, *supra* note 84, at 94.