

**MEDIA LEGAL STUDIES:  
NEW APPROACH TO REGULATE AND  
DEREGULATE THE INFORMATION FLOW**

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Perhaps the most pessimistic current debate over the so-called "Right to Information" in many "Democratising" societies, among them Algeria, is that which seeks to argue a connection between the freedom of the press, especially the rights of the pressmen, and the promised freedom of communication, as one of the most recent generations of human rights.

Everywhere, in the newly experiencing liberal democratic societies, a controversial debate has taken place between private press and governments, as the result of the entry into politics of new forces that the age of mass democracy is said to have inaugurated by giving political weight to the opinion of mass.

Referring to one of the most basic components of the "Free Press Theory", press magnates seem steely believing on the principle that the press should be free from the State control in terms of legal rules and ownership, whereas governments attempt to safeguard the maximum of their authorities concerning "legal" control over the flow of news, ideas and opinions.

Regulation or deregulation of the information flow has already moved, and journalists and governments together are facing a new era where even concepts are in process of redefinition under the uncontrolled effects of the even sophisticated technologies of communications.

Nevertheless, the controversial struggle between journalists and public powers has earlier been focussed and substituted by a moderate approach that could be an suitable alternative issue to the present struggle over the nature of such regulation or deregulation of the information flow.

The bases of this new approach can be found particularly in the so-called "Mexico Declaration" (1984) and in works(1) by scholars and experts of mass communication such as Osolnik, Masmoudi and McBride in the 1970's and the early 1980's.

Before discussing the proposals made in this context, it might be interesting to sort out some background ideas of what it becomes conventionally called "Codes of Professional Ethics", as a substitute of legal laws regarded as incompatible with the principle of the free Flow of Information.

### **The Responsibility of the Media**

A first attempt to foster responsible performance in the mass media field in accordance with the principles of the "Social Responsibility Theory", was made by the "Commission on Freedom of the Press", created in the USA, at the University of Chicago in 1940, and composed of 13 distinguished academic and public figures under the chairmanship of Chancellor Robert M. Hutchins. In one of the Commission's reports, "Peoples Speaking to Peoples"(2), by Llewellyn White and Robert D. Leigh, measures were suggested to "secure the progressive removal of political barriers and lessening economic restrictions which impede the free flow of information across national borders".

Among these were the following proposals:

1. "There be incorporated, within the framework of the United Nations Agreements, a multilateral covenant stating that the

signatory nations believe in, and will do their utmost about, the fullest possible flow across national border of true information concerning all events and peoples".

2. Specific sections of such a covenant include the following provisions:
  - (a) Guarantee of equality of access to the sources of information as between co-nationals and foreigners;
  - (b) The organisation in all principal news centers of the world of foreign correspondents corps with strict self-administered codes of ethics; the requirement that all newspapers, magazines and radio reporters and all authors and photographers be members of these corps and bound by their codes; specific authority for the corps to handle all dispute among members or with host-governments, with right of appeal to a unit of the United Nations Economic and Social Council...
  - (c) The creation of an autonomous unit in the Unesco, and co-ordinated closely with the Unesco or with the commission on Human rights, to promote the free flow of true information and the removal of artificial barriers restricting such free flow. This unit, among other things (a) to scrutinise the observance of the provisions of the multilateral treaty described above, to suggest changes in it from time to time, and to publish its findings and recommendations for the information to the United Nations Assembly (b) to assist in the formation of professional foreign correspondents corps as described above; (c) to receive, to consider carefully, and to report on individual or collective violations of the multilateral treaty; and (d) to investigate (by aid of monitoring of broadcasts, examination of printed material, and pictures) areas in which distortion of facts and fomenting of international discord are being carried on, and to report to the Assembly on such dangers to peace and understanding".

It is clear that the proposed self-administered codes of ethics aimed, from the point of view of the Hutchins Commission, at ensuring the highest possible truthfulness in the reporting of international affairs.

In addition to this definition of codes of ethics, and as, Nordenstreng points out, these proposals constitute:

"An Approach whereby the continuing struggle to establish a stable, peaceful society is understood as an essential part of professional ethics".

This study, which was made in a period of transition from a simple "libertarian" tradition to one of "social responsibility" (was seen to be a "little" different from the new defunct order movement which 30 years later had become manifest at Unesco in landmarks such as the Mass Media Declaration, The MacBride Report, and the International Programme for the Development of Communication (IPDC, 1980).

### **Professional Self - Regulation conduct**

A second background idea can be found in a work by Witton and Larson in 1964 as a "Study of Law and Remedies Dealing Upon International Propaganda". Their book on International communication is devoted to:

"a legal analysis of the rules, principles and remedies available to control propaganda of a kind that threatens the peace".

They assign great importance to professional self-regulation conduct in journalism and mass media. The following quotation reflects clearly their attachment to the high ideals of professional discipline:

"There is little doubt that private associations of journalists, broadcasters, cameramen, ... etc. could become under appropriate circumstances an excellent influence in preventing the dissemination of material dangerous to good international relations. The effort to curb pernicious inter-

national communication would be greatly facilitated by the development throughout the world of a corps of newsmen inspired by high ideals of professional conduct... It is to be hoped that the efforts to evolve and perfect codes of ethics ... will be further pursued by responsible associations".

Whitten and Larson's overall approach is defined as a set of duties and rights of communication in the performance of their professional duties whether at national or international levels. The following quotation may highly reflect their conception of codes of ethics:

"The essential duty of every communicator, whether governmental or non-governmental and whether his message is addressed to the home population or to some foreign countries is to be truthful - to search for and stick to the truth in reporting, explaining and interpreting facts.

He should be prepared to furnish accurate information, whatever the consequences.

Put it is also his duty, so far as it is reasonably possible, to "protect" and uphold the dignity and brotherhood of mankind", by avoiding messages of a nature to cause ill-will and hatred especially by the systematic diffusion of false or distorted news which undermines friendly relations between nations. For while freedom to communicate, as asserted by the United Nations General Assembly, is a

sacred human right, it is a right burdened with important duties. In the words of the United Nations General Assembly, "Freedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligations to seek the facts without prejudice and to spread knowledge without malicious intent". Thus the communicator must refrain from sending forth message's which constitute a clear and present danger to peaceful international relations. Subversion, and war-mongering, hat propaganda, and false reports, and defamation, are to be condemned. He should do his best to respect the rights and sensitivities of all peoples".

Without detailing their suggested international draft code of ethics which includes a definition of rights of the communicators and the public as well as a list of remedies in the event of a violation of any of the principles, it is important to note that such proposals by academic experts demanding that the international responsibility of the mass media should be taken more seriously than it was before.

Interpreting the above, and other academic suggestions, Nordenstreng sees that:

"These academic experts aimed at strengthening rather than eroding, the political and economic system known as "western democracy".

... It is misleading to characterise those opinions as "radical" since they do not challenge the basic structure of the predominantly non-governmental and private enterprise system

of the mass media, they are reformist opinions, looking for remedies for obvious defects in the system, to ensure that the mass media do not depart from the standards of good international behaviour".

### Universal Standards

Discussion should now turn to the proposals made properly in the context of the defunct New World Order with respect to the International mass communication regulation.

The starting point here is the viewpoint prevailing in the Non-Aligned countries whose movement gave to the call for a NWICO a more explicit explanation. Two experts, members of the MacBride Commission, Bogdan Osolnik of Yugoslavia and Mohamed Masmoudi of Tunisia, have been leading advocates for journalistic ethics in general (in matters of truth, privacy, public order and morals, and professional honesty) and for high ethical standards concerning international relations.

Osolnik, for example points out that:

"The need arises for the adoption of a special international code of ethics, which should result from the cooperation of the journalists organisations themselves on the basis of respect for general human values and interests. An international code of professional journalistic ethics should promote consciousness of journalists' responsibility, to contribute towards understanding and rapprochement among nations, towards the democratisation and transformation of international relations and towards the liberation of all mankind".

For Masmoudi, who covered the topic from political, legal and technico-financial viewpoints:

"There is a growing recognition of the fact that peaceful coexistence and the common advancement of mankind can only be achieved if the field of international communication too, principles are accepted which will in time become part of international law or at least unwritten norms of international relations and the professional ethics of all those who work in this area".

Although, Osolnik and Masmoudi do not suggest any particular formulation of such a code, as did Whitten and Larson, they, however, point out that a journalist is bound to "international responsibilities" defined by the obligations of journalism to the international community and the principles of international law deriving from United Nations documents.

Like these two mass communication experts from Non-Aligned countries, other scholars from Western and ex-Eastern countries take the same overall approach, notably Spartak Beglor (ex-USSR 1978), Wolfgang Kleinwaether (ex-GDR- 1980) and Hamid Mawlana (USA - 1981). All of whom advocate professional codes which would set universal standards for journalistic activity in matters of international as well as national relevance.

Mawlana, for instance, proposed an international code of media ethics based on four fundamental principles:

1. "Prevention of war and promotion of peace;
2. Respect for culture, traditions, and values;
3. Promotion of human rights and dignity;
4. Preservation of the home, human association, family, and community".

For Kleinwaether, such:

"code would deal with reporting and comment-  
for and about other countries as well as  
processes and events of international importance"

The same idea can be found in recommendations of several documents of meetings and studies organised or sponsored by Unesco, one of whose mandates is to help scholars and professionals in developing universal principles and codes of ethics.

In April and May 1977, meetings of consultants and experts on Contribution to an Ethic of Communication and on the Free Balanced Flow of Information were held respectively in Ottawa (Canada) and Florence (Italy). Another meeting following the adoption of the Mass Media Declaration (1978) was organised on 18-21 December 1978 and attended by 14 consultants representing academic and professional, as well as political expertise, among them MacBride and Masmoudi.

As at the two first meetings, great attention was paid to inserting the principles of the declaration in journalists' codes of ethics. In this context the report of the meeting issued as Unesco document (Paris, 1980) proposed several measures to:

"encourage the adoption of national or regional codes of ethics drawn up by journalists themselves or by news agency personnel.  
Assess the feasibility of establishing an international code of professional conduct which would be adopted by journalists possessing a "universal" sense of mission, that is to say transcending their national origin in the defense of peace and fraternity".

Such proposals are in line with the recommendations in the MacBride report, which took it for granted that codes of ethics at the national and regional level are desirable:

"provided that such codes are prepared and adopted by the profession itself without governmental interference".

A particularly significant consultative meeting<sup>(3)</sup> between international and regional organisations of journalists was organised in Mexico City in April 1980, two years after the first meeting in Paris, by FELAP, with some assistance from Unesco and the Government of Mexico. The main outcome of this meeting was the "Mexico Declaration" which is seen as a decisive step in developing universal standards of international mass communication. Its importance derives from several considerations, Nordenstreng summarises them in:

1. "The nature of the organisations that signed this document. They were all non-governmental representing the working journalists.
2. The signatories cover all countries and geo-political regions (with the exception of China).
3. Socialist and developing countries were best represented while Western Europe and North America were covered by UCIP and IOJ.
4. The International Federation of Journalists (IFJ), which includes most of the Western Journalists' trade unions did not attend the meeting, but 2 years later, the IFJ representative declared that: "We are firely devoted to the principles of the Mexico Declaration"".(4)

Consequently, this declaration is professionally accepted world-wide by various ideological and philosophical tendencies. What are those principles that enjoy such support and gain such a consensus never seen before? Nordenstreng sees that:

"The document itself has a political orient-

ation which might simply be called "democratic". it is a manifestation of the same line of universal values advocated by Unesco in the debate on the new information order".

### **Common Ground of Existing Ethics**

In fact the preambular paragraphs 1-3 state that the signatories spell out their:

"respect for relevant instruments of the international community designed to promote peaceful and democratic relations in the field of information".

Principle I of this document defines the journalist's role as:

"an instrument to materialise the people's right to true information - the truth understood as objective reality to be discovered and communicated to the public as accurately and comprehensively as possible".

While principle II considers the information as a "social need and not commodity", thus, the journalist's social responsibility. Principle III is related to the right of the journalist to:

"participate in the decision-making of the media in which the journalist is employed".

Thus he has a right to contribute to the determination to the policy of production and dissemination of the information which he is socially responsible for.

Public access and participation notions are clearly referred to in principle IV. This advocacy makes journalism dependent on certain social interests and values.

The other principles, especially VII and VIII draw attention to the universal values such as "peace, democracy, human rights, social progress and national liberation" as well as to:

"incitement to wars of aggression and arms race, and other forms of violence, hatred or national, racial or religious discrimination".

To sum up the content of the "Mexico Declaration" which contains Ten Principles(5), it can be said that it constitutes a source of inspiration for professional organisations to develop their respective codes of ethics with:

"The ultimate objective of preparing a draft international code of journalistic ethics".

Moreover, it is as Nordenstreng says:

" a widely representative and up-to-date call for an international code of journalistic ethics".

But the elaboration of such a code is obviously a slow process, and needs time to be constructed in the same line with the universal values and principles that are reflected in the UN system including international law which is evidently mainly addressed to states as members of the international community.

It is also interesting to note that this Declaration is seen as a set of principles which represent common ground of existing national and regional ethics as well as relevant provisions contained by various international instruments of a legal nature.

It is important to note that the fourth consultative meeting of these professional organisations (Prague 1983) was attended by representatives from the following organisations:

International Organisation of Journalists (IOJ),  
International Federation of Journalists (IFJ),  
International Catholic Union of the Press (UGIP),  
Latin-American Federation of Journalists (FELAP),  
Latin-American Federation of Press Workers (FELATRAP),

Federation of Arab Journalists (FAJ),  
Union of African Journalists (UJA), and  
Confederation of Asian Journalists (CAT).

The conclusion to be drawn from this large review of opinions about the professional codes as a source of universal standards for the performance of the mass media, is that the professional organisations which have, in the present situation of the international stream of information, heavy responsibility to bear, seem to be prepared to accept the "internationalisation" of mass communication regulation. In this respect the organisations concerned declared in 1982 in their third consultative Baghdad meeting that:

"While understanding that the new order should be based on respect for the international laws contained that in the UN Charter, we are convinced that the new information and communication order is in no way aimed at the establishment of governmental censorship".(6)

This, however, is not important in itself. What is important is an "historical perspective is the fact that normative considerations have survived as a matter of highest priority and that a bridge was built up between the profession of journalism and the international community".

"It is task of the profession and journalism education and research along with it, to meet the challenge".

## Footnotes

- (1) - More Information could be found in Works by A. Kessaissia,
  - *In English*
    - \* The Universal Principles Governing the Mass Media, *Revue Algerienne de Communication*, No. 10, 1995.
  - *In Arabic*
    - \* The Right to Information in the Algerian Law, *Revue Algerienne de Communication*, No. 13, 1996.
    - \* The Modern Information Legislation Under the Principles of the "Free Market of Ideas", *Revue Algerienne de Communication*, No. 14, 1997.
- (2) - This report was published in 1946 by the University of Chicago Press. Like the main report, *A Free and Responsible Press*, they were reprinted in 1977 by *Journalism Monographs* No. 9; and in 1982 by *Arnold Press Inc.*, (*International Propaganda and Communication Series*).
- (3) - Quotation from the Hutchins Commission's Report, in Kessaissia, *The Legal Aspects of the Transnational Flow of Information*, Unpublished MA Thesis, University of Algiers Library No. 1/1998.
- (4) - The first meeting was held in Paris in April 1978.
- (5) - From "Bagdad Declaration", of the Third Consultative Meeting held in February 1982.
- (6) - This document is published in Nordenstreng, *The Unesco Declaration on the Use of the Mass Media*, ..., 1984.
- (7) - "Bagdad Declaration", *International Organisation of Journalists (IOJ) Newsletter*, No. 5, March 1982.