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NOTE

The New World Information Order: A Legal Framework for Debate

by Bryan J. Holzberg*

I. INTRODUCTION

The General Conference [of UNESCO] expresses the wish that UNESCO demonstrate its willingness in its short and medium-term activities to contribute to the delineation, broadening and application of the concept of a New World Information Order.¹

THIS 1980 United Nations Educational, Scientific and Cultural Organization (UNESCO) declaration, in response to an exhaustive report on international communications, focused on the right of communication in an attempt to internationally proclaim and regulate a New World Information Order (NWIO). The debate process, which has yet to settle on binding legal principles, impinges upon both national responses to a claimed right of communication and upon international agencies acting in the field of communications.

The debate, thus far, has been acrimonious, with significant legal, social, and economic overtones. As chronicled,² the developing world³ alleges that the West is guilty of political and cultural imperialism. One instrument of this "concerted" policy is communication. At a time when States have come to depend upon interconnected international information flows, the developed world dominates the Third World with: its control over communication collection and dissemination resources; its sheer financial power; and, its division of the scarce electromagnetic spectrum

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¹ Resolution of the 21st General Conference of UNESCO, as excerpted in LeDuc, *East-West News Flow Imbalance: Qualifying the Quantifications*, 31 J. Com. 147 (1981).

² For an overview of Third World complaints, see Masmoudi, *The New World Information Order*, 29 J. Com. 172 (1979).

³ For the purposes of this article the terms "developing states" and "Third World" are synonymous. They signify countries undergoing rapid economic expansion and diversification.

on which such development aids as broadcast, education, and meteorology depend. The result is overpowering, transforming the legal, economic, and cultural fabric of developing States into copies of already developed models.

Much has been written concerning specific issues raised in the NWIO debate.⁴ However, few attempts have been made to explore the interrelationships of legal norms, technological changes, and social and political processes as they concern communication. The concept of the right to communicate and the methods by which States control internal flows of communications will be explored. Technological changes regarding acquisition devices and information management have added to the issue of the equitable distribution of the electromagnetic spectrum. The parameters of this surveyed issue will be based on attempting to balance information flows between countries.

An outgrowth of the NWIO debate is that communication and the mass media have become issues within the ambit of international law; therein lies an outline for a new order. Thus, this Note will make recommendations which would affect this order within international agencies and national constructs.

II. LEGAL DEFINITIONS OF THE RIGHT TO COMMUNICATE

A system of legal analysis in an international context is essentially meaningless unless the right to communicate can be made universally comprehensible and is flexible enough to account for technological change. At the outset, it is important to determine whether the right to communicate, as expressed in the NWIO debate, is a legal doctrine, or instead, merely a term of art used to set priorities in controlling international communication. Distinguishing these perspectives will then aid in analyzing the central points of the NWIO debate by placing the debate in a legal, historical, and socioeconomic perspective.

A. *International Constructs*

The U.N. Charter enunciates principles of equal rights and self-determination for all peoples,⁵ the prohibition of force by a State in any manner inconsistent with U.N. purposes,⁶ and prohibitions against U.N. or individual State intervention into the domestic matters of another

⁴ For a list of documents on the study of communication problems see, INTERNATIONAL COMMISSION FOR THE STUDY OF COMMUNICATION PROBLEMS, *MANY VOICES, ONE WORLD* 297 (1980) [hereinafter *The MacBride Report*].

⁵ U.N. CHARTER art. 1 para. 2.

⁶ *Id.* at art. 2 para. 4.

State.⁷ The U.N. Charter is not a neutral document; it purports to stand for the ideology of self-dignity and support for self-determination.⁸ In this context, the 1948 Universal Declaration of Human Rights indicates additional normative expectations supporting communications: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."⁹ The Declaration also limits the freedom of expression:

In the exercise of his rights and freedoms, everyone shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society.¹⁰

The definition of "law" is an important constraint on this principle. The "just requirements" of "a democratic society" are also undefined limitations. Although deprivation of these "human rights" is to be "determined by law," thereby excluding extralegal deprivations, the conditions defining when such limitations may occur appear to be ideologically based. Arguably, governmental limitations on communications may be directed under law and yet violative of a right to self-determination.¹¹ When coupled with force, they become inconsistent with the spirit of the U.N. Charter.¹²

The Helsinki Accords of 1975,¹³ although not legally binding on the 34 signators, represent another documented expectation of free communication. In addition to a reaffirmation of human rights,¹⁴ the Accords specifically aim "to facilitate the freer and wider dissemination of information of all kinds . . . and to improve the conditions under which journalists from one participating state exercise their profession in another participating state."¹⁵

⁷ *Id.* at art. 2 para. 7.

⁸ *Id.* at Preamble.

⁹ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948) at art. 19, reprinted in L. SOHN AND T. BUERGENTHAL, BASIC DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS 30 (1974).

¹⁰ *Id.* at art. 29, para. 2.

¹¹ Human Rights are implicitly bound to the jurisprudence of any state that calls itself "free" or "democratic" as noted by McDougal, *Jurisprudence for a Free Society*, 1 GA. L. REV. 1, 16-18 (1966).

¹² See U.N. CHARTER art. 2 Para. 7.

¹³ 73 DEP'T ST. BULL. 323 (1975).

¹⁴ *Id.* at art. VII.

¹⁵ *Id.*

B. National Legislation

Also of significance are those national legal principles and regulations which are applicable to transnational communication. Most modern States guarantee the right to communicate in some form.¹⁶ This right includes both the rights to impart and to receive information and viewpoints. Yet, these same States all maintain a variety of legal restrictions on the right of communication.¹⁷ Libel and obscenity statutes and the allocation of broadcast channel access are examples of such restrictions.

Public international law is a basic source for national legislation. The law of treaties and international conventions is such that the substance of United Nations, UNESCO and International Telecommunications Union (ITU) provisions, along with the Universal Declaration of Human Rights provisions concerning communication, has provided the basis for domestic statutes and constitutional law.¹⁸

Constitutional law generally establishes a law of communication through broad principles; jurisprudence and statutory language then transform this body of law into precise regulations. Furthermore, professional organizations have established codes and councils which are important sources of laws concerning communication.¹⁹ However, differences in legal vocabulary and national systems create difficulties with the direct comparison of terminology and classification.

1. Constitutional law: the U.S. model

The U.N. Charter and Universal Declaration have inspired many States to include specific guarantees for free communication within the context of human rights.²⁰ Other States have followed a model established by the Union of Soviet Socialist Republics (U.S.S.R.).²¹ The U.S. Constitution, with its penchant for free speech guarantees, has similarly

¹⁶ See, e.g., CONST. art. 79 §§ 1-2 (Kenya), CONST. art. 8 (Senegal) and CONST. art. I § 15 (Liberia) reprinted in A. PEASLEE, CONSTITUTIONS OF NATIONS (1974); CONST. art. 15 (Italy), CONST. art. 28 §§ 1-2 (Czechoslovakia), CONST. art. 9 (Finland), CONST. art. 10 § 3 (Chile), CONST. art. 150 §§ 9-10 (Brazil) and CONST. art. 32 (Cuba), reprinted in A. PEASLEE, CONSTITUTIONS OF NATIONS (1965).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See, e.g., C. MACDOUGALL, INTERPRETATIVE REPORTING 24 (7th ed. 1977).

²⁰ See, e.g., CONST. art. 8 (Senegal), CONST. art. 11 (Zaire) and CONST. art. 40 (Guinea) reprinted in A. PEASLEE, CONSTITUTIONS OF NATIONS (1974); CONST. art. 20 (Spain) reprinted in Glos, *The New Spanish Constitution Comments and Full Text*, 7 HASTINGS CONST. L. Q. 47, 83-84.

²¹ CONST. art. 39 (U.S.S.R.), reprinted in W. BUTLER, COLLECTED LEGISLATION OF THE USSR AND CONSTITUENT UNION REPUBLICS. See also THE CONSTITUTION OF THE USSR AND THE UNION REPUBLICS (F.J.M. Feldbragge ed. 1979).

inspired other constitutions.²²

It is important to place the U.S. Constitution and its historical development in perspective before analyzing its impact upon other national norms. In this regard, U.S. Supreme Court Justice Potter Stewart's views are particularly influential in coloring much of the recent Supreme Court activity in the field of communications.²³

In a lecture presented in a communications seminar, Justice Stewart observed:

For centuries before our Revolution, the press in England had been licensed, censored, and bedeviled by prosecutions for seditious libel. The British Crown knew that a free press was not just a neutral vehicle for the balanced discussion of diverse ideas. Instead, the free press meant organized, expert scrutiny of government. . . . This formidable check on official power was what the British Crown had feared—and what the American Founders decided to risk.²⁴

A natural progression of this history was the seeming simplicity of the first amendment of the U.S. Constitution: "Congress shall make no law . . . abridging the freedom of speech, or of the press."²⁵ This amendment was an outgrowth of the struggles chronicled by Blackstone: "Every free-man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press."²⁶

Often judges in U.S. courts are called upon to explain the first amendment in its press application as did Justice Stewart when he wrote: "If the constitutional protection of a free press means anything, it means that government cannot take it upon itself to decide what a newspaper may and may not publish."²⁷ But, U. S. case law need not distinguish between the press and other forms of speech. It is all "communication" and information, and a "fundamental personal right"²⁸ which fosters the "social interest in the attainment of truth."²⁹

²² U.S. CONST. amend. I. See, e.g., Liberia *supra* note 17, CONST. art. 38 (Colombia) and CONST. art. 14 (Argentina), reprinted in A. PEASLEE, CONSTITUTIONS OF NATIONS (1965).

²³ See generally Abrams, *The Press Is Different: Reflections on Justice Stewart and the Autonomous Press*, 7 HOFSTRA L. REV. 563 (1979).

²⁴ Stewart, *Or of the Press*, 26 HASTINGS L. J. 631, 634 (1975).

²⁵ See U.S. CONST., *supra* note 22.

²⁶ W. BLACKSTONE, 4 COMMENTARIES ON THE LAWS OF ENGLAND 151-52 (Dawson's reprint of 1st ed. 1966).

²⁷ Landmark Communications, Inc. v. Virginia, 435 U.S. 820, 849 (Stewart, J. concurring 1978).

²⁸ Lovell v. City of Griffin, 303 U.S. 444, 450 (1938).

²⁹ Z. CHAFEE, FREE SPEECH IN THE UNITED STATES 33 (1941), quoted in Saxbe v. Washington Post Co., 417 U.S. 843, 862 (Powell, J. dissenting 1974).

2. Constitutional law: the communications context

Most national constitutions explicitly acknowledge the right of communication as a fundamental freedom. The U.S.S.R. declares that: "In accordance with the interests of the working people and with a view to strengthening the Socialist system, citizens of the U.S.S.R. shall be guaranteed the freedom of: speech, press, assembly, meetings, street processions, and demonstrations."³⁰

India, a major non-aligned State, promises that: "All citizens have the right of freedom of speech, assembly, association, movement, residence, property, and profession."³¹ More ambiguously, Mexico pledges that: "The expression of ideas shall not be subject to any judicial or administrative investigation, unless it offend[s] good morals, impair[s] the rights of good parties, incite[s] to crime or cause[s] a breach of the peace."³²

One of the newest constitutions also appears to offer the fullest protection for communication. In 1978, Spain rewrote its Constitution to include extensive sections on the right to communicate by means of speech, press,³³ or image³⁴ along with a right of access to government-controlled media.³⁵

As might be expected when comparing differing sociopolitical systems, some constitutions, such as that of Mexico, stress fundamental rights,³⁶ while others, such as that in the U.S.S.R., temper the rights and freedoms granted by stressing the individual's fundamental duties to the State.³⁷ The U.S.S.R. also requires its citizens to uphold the dignity of citizenship.³⁸ And, in the case of India, guarantees must be read alongside constitutional provisions which stipulate the supremacy of State policy over fundamental rights.³⁹ In this regard, fundamental freedoms may not be exercised to the detriment of the State, to society, or to any other citizen.⁴⁰

³⁰ USSR, *supra* note 21 at art. 50.

³¹ CONST. art. 19(1) (India), *reprinted in* A. PEASLEE, CONSTITUTIONS OF NATIONS (1974).

³² CONST. art. 6 (Mexico), *reprinted in* A. PEASLEE, *supra* note 23. CONSTITUTIONS OF NATIONS (1965).

³³ Glos, *supra* note 20, at art. 20.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See* Mexico, *supra* note 32.

³⁷ USSR, *supra* note 21, at art. 39.

³⁸ USSR, *supra* note 21, at art. 59.

³⁹ India, *supra* note 31, at §§ 4 and 11.

⁴⁰ *Id.* at art. 39.

3. Laws of limitation

More important to a definition of the right to communicate are those restrictions which are established by subsequent law and practice, or embodied in a State's constitution. These restrictions vary from country to country, and in fact (as with differing libel and obscenity statutes in each of the United States) within regions of a country. Although it is difficult to arrive at general conclusions based on the great diversity of political, religious, and social restrictions directed toward the right to communicate, it can be stated that no country allows an unchallenged right of communication.⁴¹

Thus, by comparison, the United States has reduced limitations to a minimum. Restrictions on the right to communicate serve to protect against defamation,⁴² obscenity,⁴³ internal disorder,⁴⁴ and external aggression.⁴⁵ Conversely, the U.S.S.R. provides for national civil actions in the case of defamation and considers the legal requirement of correction and retraction integral to damages.⁴⁶ A unique application of this provision recently occurred when the Soviet Government sued two U.S. correspondents for an alleged libel which took place outside Soviet jurisdiction.⁴⁷

The two American journalists dispatched accounts from the U.S.S.R. regarding the confession of a Soviet dissident, along with disputes as to the veracity of the confession.⁴⁸ Although these accounts appeared only in American newspapers, the Soviet Committee for Television and Radio sued in Soviet court, claiming that its honor and dignity had been threatened and maligned.⁴⁹ International law does permit the extraterritorial application of domestic law,⁵⁰ however, extraterritorial defamation suits are rare. In this case, the two American journalists were found guilty⁵¹ and their newspapers were obliged to pay sizable fines, but they did not issue retractions.⁵²

This case illustrates the differing perspectives on the right to com-

⁴¹ See The MacBride Report, *supra* note 4, at 207-08.

⁴² *Chaplinsky v. New Hampshire* 315 U.S. 568, 571-72 (1941).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See U.S. CONST. art. III § 3; see also *Cramer v. U.S.* 325 U.S. 1 (1944).

⁴⁶ CIVIL CODE OF THE RUSSIAN SOVIET FEDERATED SOCIALIST REPUBLIC [hereinafter RSFSR] art. 7, reprinted in RSFSR (trans. Gray and Stults 1965).

⁴⁷ See generally, Note, *The Free Press and Its Territorial Limitations: United States Correspondents in the Soviet Courts*, 5 BROOKLYN J. INT'L L. 348 (1979).

⁴⁸ N.Y. Times, May 20, 1978, at 7, col. 1.

⁴⁹ N.Y. Times, June 29, 1978, at 1, col. 1.

⁵⁰ L. HENKIN, R. PUGH, O. SCHACHTER AND H. SMIT, *INTERNATIONAL LAW* 422 (2d ed. 1980).

⁵¹ N.Y. Times, June 30, 1978, at 6, col. 1.

⁵² N.Y. Times, August 4, 1978, at 5, col. 1.

municate. A state obviously perpetuates its political philosophies through legal mechanisms, even where that definition restricts communication to that of an uncontroversial nature and curtails the right to communicate between States.⁵³

Another limitation on communication is illustrated in Mexico's Constitution. As noted above, the freedom of expression of ideas is upheld;⁵⁴ however, in times of "serious conflicts in society," the President is empowered to suspend the guarantees.⁵⁵

The germ of restrictive disease is present in any such principle. All States prohibit publications injurious to national security.⁵⁶ Furthermore, prohibitions may extend to a wider range of subject matters.⁵⁷ States may desire to attain the ideals embodied in their constitutions, but evolving political and social structures often mitigate against proclaiming a "perpetual" state of emergency. Nam and Oh, after extensive study, have concluded that an "emergency" is often a synonym for the overburdening of the political forces of a country.⁵⁸ Whereas the communication systems in the West have evolved within the incremental development of their countries as a whole,⁵⁹ this study suggests that the demand for the quick development of a country creates intolerance both of critics and the freedom of communication.⁶⁰

4. Defining and regulating communication systems

No State truly defines its guarantee to a right to communicate, without first defining "information." For instance, should there be any

⁵³ The MacBride Report, *supra* note 4, at 248-49.

⁵⁴ See Mexico, *supra* note 32.

⁵⁵ *Id.* at art. 29.

⁵⁶ The MacBride Report, *supra* note 4, at 207-10.

⁵⁷ In 1975, India imposed a State of Emergency which included provisions for the censorship of all matters necessary for the public safety, maintaining public order, and for the civil and national defense. These provisions, incorporated into the Constitution, permitted the State to seize newspapers and arrest writers and editors of offending articles (including those responsible for truthful accounts of parliamentary proceedings). When one editor challenged the official censor, the Indian Court wrote: "Dissent from the opinions and views held by the majority and criticism and disapproval of measures initiated by a power, make for a healthy political climate, and it is not for the Censor to inject into this the lifelessness of forced conformity." The "emergency" continued until a new government was elected, on March 20, 1977. One of the first actions of the new government was to rescind the various censorship provisions in effect under the emergency. See Irani, *The Press Emergency in India*, 31 NIEMAN REPORTS 49 (1977).

⁵⁸ Nam & Oh, *Press Freedom: Function of Subsystem Autonomy*, 50 JOURNALISM Q. 744 (1973).

⁵⁹ Address by A. Dershowitz, Conference on Freedom of the Press (Case Western Reserve School of Law, April 18, 1980).

⁶⁰ See Nam, *supra* note 58, at 745.

distinctions between such disparate communications as editorial, cultural, entertainment, or documentary reportage? States must also build into their legal systems the flexibility to confront technological changes that may eliminate the telecommunications regulations premised upon the notion of domestic channel scarcity. Only after such definitions are realized may there be a basis for modifying existing practices which inhibit the international flow of communication.

There are three basic forms of communication, and each creates unique legal, political, and social issues. The first type is the point-to-point system. Its operation is based on the delivery of messages from a sender to a designated recipient in forms ranging from personal courier to satellite.⁶¹ The second format is the one-to-many system which pertains to mass media requiring a technical infrastructure. This approach offers a variety of structural patterns according to the roles placed upon them by the State and by the sophistication of the society. Finally, interpersonal communications make up an integral part of the public communications system.

Policy issues which affect the definition of communication and the development of international communication include: ownership, financing, and the degree of social supervision. Social supervision intrudes directly upon questions of media content, which in turn are a major focus of the NWIO.

Although there are disparate laws governing the communicators, these laws are essentially divided into State control of communication enterprises and private operations conditioned by a number of formalities.⁶²

No hard and fast conclusions can be drawn as to whether specific

⁶¹ Many of these services are controlled by a domestic Postal Administration, with international flows regulated by the Universal Postal Union; public or private telephone services determine tariffs and service standards in accordance with domestic regulatory bodies. In addition to controlling communication processes, many States seek to retain sovereignty over data bases. To this end, access to data is being restricted and legal remedies are being developed in a manner comparable to that found in United States. See U.S. Privacy Act of 1974, 5 U.S.C. § 552a (1976).

Data protectionism in general is beyond the scope this article. For an overview of legal issues raised by transborder data flows, see Gotlieb, Dalfen & Katz, *The Transborder Transfer of Information by Communications and Computer Systems: Issues and Approaches to Guiding Principles*, 68 Am. J. INT'L L. 227 (1974).

⁶² The MacBride Report *supra* note 4, at 120, reported a trend towards increasing involvement of the State in communications enterprises. This is the case not only in Communist Governments, where communications are part of the overall political program of the State, but also in many developing States. Developing States may find the need for both establishing and maintaining the communications infrastructure since private economic incentives might be slight. Formalities conditioning the communications infrastructure are thus divided into mechanisms for social control, pre-operational requisities, control of material resources, and financial constraints and incentives.

ideological or economic systems foster public communication systems. Many communications systems are owned outright or by a controlling political party.⁶³ For instance, 47 of 71 newspapers published in Africa are owned by the State, and only 20 newspapers are fully private enterprises.⁶⁴ Mixed systems of State and private enterprises do exist.⁶⁵

Sri Lanka offers an apparently unique approach to communications systems through its legislation which effectively reduces private monopoly control in newspapers. By statute, 25 percent of large newspapers may be privately owned, but 75 percent of the corporate shares must be distributed to the public, often to State surrogates.⁶⁶

Telecommunications, by contrast, is subject to State involvement by every country.⁶⁷ This control ranges from the monopolistic regulation of the limited electromagnetic spectrum⁶⁸ to direct state broadcasts,⁶⁹ and day-to-day management responsibility for broadcast units. Again, using Africa as an example, all broadcast systems on the continent are State-operated except for those in Nigeria, Ghana, Mauritius, and Malawi.⁷⁰

Privately-owned communication systems often require operational formalities and involve regulating the activity of individuals within the communications enterprise.⁷¹ States such as Sweden, Italy, and France also "interfere" with the functioning of communication enterprises through the use of subsidies.⁷²

Overall, developed States have few regulations requiring prior authorization before a communication enterprise may operate.⁷³ Generalizations are risky, however, because many States, including Western coun-

⁶³ INTERNATIONAL COMMISSION FOR THE STUDY OF COMMUNICATIONS PROBLEMS, SURVEY OF NATIONAL LEGISLATION (2) Report No. 24 at 3 (1979).

⁶⁴ *Id.*

⁶⁵ *Id.* Examples include Liberia, Sudan, and Tanzania, where national newspapers print under Government authority, but must arrange for their own financing.

⁶⁶ *Id.* at 4-5.

⁶⁷ The MacBride Report, *supra* note 4, at 120.

⁶⁸ The United States provides an example where the Federal Communications Commission regulates the private sector. Justice Frankfurter wrote for the Supreme Court that, "The facilities of the radio are simply not large enough to accommodate all who wished to use them . . . Methods must be devised for choosing from among the many who apply." *National Broadcasting Company v. United States*, 319 U.S. 190, 216 (1943).

⁶⁹ See E. KATZ & G. WEDDELL, BROADCASTING IN THE THIRD WORLD (1978).

⁷⁰ SURVEY OF NATIONAL LEGISLATION, *supra* note 63, at 6-9.

⁷¹ See generally *id.* at 6-13. Many countries have requirements concerning owners and editors. These same countries draw their media personnel from government representatives. Age and education requirements are also noted in this Report and it is likely that "closed shop" practices exist in some countries, where employment is limited to union members.

⁷² The MacBride Report, *supra* note 4, at 101. Subsidies vary in form from tax-relief, to direct grants-in-aid, to distribution assistance, quoting Smith, *Subsidies and the Press in Europe*, 43 POL. & ECON. PLAN. 569 (1977).

⁷³ See SURVEY OF NATIONAL LEGISLATION, *supra* note 63, at 6-13.

tries, do impose constraints such as government authorization, conditional registration and print-runs, a required legal deposit (bond), and limitations on the number of media outlets.⁷⁴

Common forms of authorization include conditional publication permits (as required by Ghana),⁷⁵ and specific pre-publication declarations to a public prosecutor (as required by France).⁷⁶ France also requires a pre-publication legal deposit⁷⁷ that, as in other countries,⁷⁸ functions as a prosecutorial bond in the event of legal action against the communication enterprise.

Newspaper prices,⁷⁹ advertising prices and content,⁸⁰ and printing runs⁸¹ are also subject to regulation. Similar control or regulation may take the form of governmental subsidies of the enterprise. Subsidies may be used to maintain a diversity of publications (where made to all enterprises or in a form of tax abatements and postal and distribution aid) as in Sweden,⁸² or to assert political interference.

Much legislation directed toward a nationality requirement, usually requiring that owners and financial backers of a communications enterprise be citizens of that State.⁸³ Editors must also be identified in each issue of a newspaper, as in Australia,⁸⁴ along with the publisher and printer, as in Gabon;⁸⁵ generally, there is an added requirement that such individuals not be legislators.⁸⁶

News agencies may be controlled by States much as are newspapers. A number of news agencies operate independently from the State, even where the State, as in France⁸⁷ with the Agence-France Presse (AFP), was instrumental in setting up the agency or receives revenues from the agency. Agency cooperatives, whose beneficiaries are its owners, are also operational⁸⁸ and are frequently organized in legal form as commercial

⁷⁴ *Id.*

⁷⁵ *Id.* at 11.

⁷⁶ *Id.*

⁷⁷ *Id.* at 13.

⁷⁸ *Id.*

⁷⁹ *Id.* at 12.

⁸⁰ *Id.*

⁸¹ *Id.* at 9.

⁸² *Id.* at 15.

⁸³ *Id.* at 6-7.

⁸⁴ *Id.* at 8.

⁸⁵ *Id.*

⁸⁶ *Id.* at 9.

⁸⁷ A. SMITH, *THE GEOPOLITICS OF INFORMATION* 85 (1980).

⁸⁸ These range from combining a number of news agencies into a larger agency, owned by the organization which they serve, such as the Caribbean News Agency (CANA) which serves 16 outlets in 6 Caribbean countries, to the Associated Press (AP), the largest cooperative with over 1,320 members.

enterprises. State agencies, however, are the most common form of news agencies.⁸⁹

Degrees of State control over agencies range from the agency being a cultural and informational distributor linked to a Ministry of Information as in Syria,⁹⁰ or Culture, as in Czechoslovakia,⁹¹ to a public authority enjoying large legal and financial autonomy, as in Malaysia.⁹² Many agencies are the sole distributors of foreign news in their countries.⁹³ Every news agency has a code of objectives and principles. These goals may be established by legislation⁹⁴ and, as in Nigeria, a Council of Trustees may oversee everyday adherence to the code.⁹⁵

Governments also implement policies limiting the private sector's allocation of essential media resources; one result is that printing paper imports, a commodity which is in short supply internationally⁹⁶ may be regulated or manipulated.⁹⁷ Newspaper size, circulation, and advertisements are all subject to governmental regulation,⁹⁸ especially if a government wishes to reward favorable coverage.⁹⁹ Broadcast communications may also be inhibited by import controls on technical production and receiving equipment.

C. Professional Constraints and Evolution

The Western concept of the mass media is a temporally evolving doctrine ascribing rights and duties to purveyors and practitioners of communications. Today, much of the Western communication milieu operates under the principles of objectivity and impartiality.¹⁰⁰ Historically, the flow of communication development has been one of transplanting these values along with technologies to colonies, and later, to the developing world.¹⁰¹

However, journalists in developing States need not be judged by

⁸⁹ SURVEY OF NATIONAL LEGISLATION, *supra* note 63, at 16-19.

⁹⁰ *Id.* at 18.

⁹¹ *Id.* at 17.

⁹² *Id.* at 10.

⁹³ A large majority of foreign dispatches are received by state-run agencies, who in turn edit and distribute articles to domestic publications. See, e.g., L. SUSSMAN, MASS NEWS MEDIA AND THE THIRD WORLD CHALLENGE, V Washington Papers 10 (1977).

⁹⁴ SURVEY OF NATIONAL LEGISLATION, *supra* note 63, at 26.

⁹⁵ *Id.* at 27.

⁹⁶ See *id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Irani, *supra* note 61.

¹⁰⁰ A journalist's entire training is devoted to overcoming or sidestepping his prejudices. C. MACDOUGALL, *supra* note 20, at 12.

¹⁰¹ Pool, *The Mass Media and Politics in the Modernization Process*, in COMMUNICATIONS AND POLITICAL DEVELOPMENT 234 (C. Pye ed. 1963).

these Western standards. The institutions receiving new technologies in developing States often differ from those Western institutions which helped create the technology.¹⁰² Thus, journalists, broadcast units, and other communication institutions in developing States are often evolving under close local governmental supervision.¹⁰³

"It is maintained that the adoption of any definition whatever [of journalists] generally leads to the official licensing of journalists."¹⁰⁴ There is a trend for States to continue their guarantees of free communication and, while not explicitly defining communication, singling out journalists to function under special limitations.¹⁰⁵ The licensing and accreditation of journalists implicitly set forth a legal definition from which specific protections for journalistic communications may result. Yet, the more important result is that government intrudes at the core of the right to communication by monitoring the purveyors of communication and, therefore, develops legal obligations for journalists which permeate all forms of speech.

One substitute for direct definition and, as such, control over the communication media, while retaining freedom of expression, is self-regulation by the media. Such regulation starts with an *ad hoc* decision by practitioners as to who should be regulated. Regulations take the form of codes of ethics with disciplinary measures¹⁰⁶ and may include quasi-judicial councils of adjudication over complaints against the communication media.¹⁰⁷ Councils have been established by statute¹⁰⁸ or by private contributors¹⁰⁹ and have jurisdiction over all mass media. Authority exists

¹⁰² For example, see Matta, *The Latin American Concept of News*, 29 J. COM. 164, 165-66 (1979). See also W. EMERY, NATIONAL AND INTERNATIONAL SYSTEMS OF BROADCASTING 17 (1969).

¹⁰³ Western technologies offered to other societies often become instruments of the local elites or are inoperable without modifications for local needs. Thus, in Nigeria, the Federal Government received Western broadcasting technologies and beamed a number of Western-produced programs, along with locally-produced materials, on a national television system. However, this national system was unable to overcome differences in religion, ethnicity, and language. Regional stations were also set up, but they failed to attract commercial economic support. As a result, the medium was controlled by ruling groups, without any competing broadcasters of input into the network. E. KATZ & G. WEDDELL, *supra* note 69.

¹⁰⁴ The MacBride Report, *supra* note 4, at 237.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 241-44. These ethics commonly include promoting truthfulness, accuracy, and freedom of access, though proscribing libel, privacy, and obscenity. *Id.*

¹⁰⁷ *Id.* For instance, the U.S. National News Council receives complaints against publications, investigates the allegations, and then issues a written opinion on the matter, including, upon occasion, dissents.

¹⁰⁸ Bertrand, *Press Councils Around the World; Unraveling a Definitional Dilemma*, 55 JOURNALISM Q. 241 (1978).

¹⁰⁹ Interview with officials of the U.S. National News Council (New York City 1980).

within the councils to impose penalties ranging from legal sanctions¹¹⁰ to the less formal, but perhaps more effective, ability to mobilize professional and public opinion.¹¹¹

III. THE ROLE OF UNESCO

UNESCO is a U.N. organization whose purpose is to promote and protect international human rights.¹¹² As such, it has become a primary forum for discussions of the New World Information Order.

A. Structure and Policy

The legal basis for UNESCO's involvement with human rights, and with the debate on communication, is its constitution. Specifically, UNESCO is charged with the duty of "*promoting* collaboration among the nations . . . in order to further universal respect for justice, for the rule of law and for the *human rights and fundamental freedoms*" of the U.N. Charter.¹¹³ Furthermore, UNESCO is empowered to achieve this purpose by recommending "such international agreements as may be necessary to promote the free flow of ideas by word and image."¹¹⁴

Every two years, all member countries convene at a General Conference to determine UNESCO's program and budget.¹¹⁵ During this Conference, reports and actions taken by member States are considered in response to previous Conference recommendations and reports.

A majority of UNESCO's member States may be classified as developing States. They are aware of the potential for other countries to develop the means and structures necessary to transmit and receive information. They are also aware of imbalances in the origin and manufacture of this information and in communication channels, as well as the impact that foreign communications have upon their own culture and value systems.¹¹⁶ UNESCO has tried to reconcile these shared State views, not always successfully, with those views of members having a deep ideological and legal attachment to the right to communicate. For example, the 1972 General Conference accepted a declaration on satellite broadcasting which featured nondiscrimination in the availability of such broadcasting, the right of individual States to determine the content of their own

¹¹⁰ The MacBride Report, *supra* note 4, at 245.

¹¹¹ For many years the U.S. Council expressed its views of such opinions and transactions in the COLUM. JOURNALISM REV.

¹¹² UNESCO CONST., *entered into force* Nov. 4, 1946, 61 Stat. 2495, T.I.A.S. No. 1580, 4 U.N.T.S. 275, Preamble.

¹¹³ *Id.* at art. 1, para. 1 *emphasis added by author*.

¹¹⁴ *Id.* at art. 1, para. 2 (a).

¹¹⁵ *Id.* at art. 4, para. 6.

¹¹⁶ See Masmoudi, *supra* note 2.

broadcasts, and the promotion of accurate broadcasts.¹¹⁷

B. *The Evolving Communications Debate*

UNESCO's interest in communication has intensified in recent years, gradually reaching the current level of discussion during a General Conference. As indicated by an approved plan of activities for 1977-1982, this interest is now firmly established: "Communication . . . is an essential component of a new social and economic order, and equal access to information sources and flows between and within societies is necessary for its establishment."¹¹⁸

At the 1972 General Conference, the U.S.S.R. introduced a resolution entitled, "A Draft Declaration on Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and in Combating War, Propaganda, Racism, and Apartheid."¹¹⁹ This proposal received considerable opposition¹²⁰ and, as a result, a revised declaration was placed on the agenda of the 1976 Nairobi General Conference.¹²¹

Two sections of the revised proposal received particular attention at the Nairobi Conference. Representatives from developed nations criticized proposed articles that would have permitted States to rectify, using the same medium, those media accounts which they considered erroneous,¹²² and placed responsibility for all international media in the hands of the State from which that communication originated.¹²³ Other propos-

¹¹⁷ *Declaration of Guiding Principles on the Use of Satellite Broadcasting for the Free Flow of Information, the Spread of Education, and Greater Cultural Exchange*, 17 UNESCO Gen. Conf. Rec. 67 (1973) UNESCO Doc. 17 C/Resolution.

¹¹⁸ UNESCO, MEDIUM TERM PLAN (1977-1982) Objective 9.1 at 299, UNESCO Doc. 19 C/4.

¹¹⁹ UNESCO Doc. 19 C/91 (1976).

¹²⁰ UNESCO Res. 4.143, 19 UNESCO Gen. Conf. Res. 53, UNESCO Doc. 19 C/Res. (1977).

¹²¹ *Id.* In the interim, the Fifth Non-Aligned Summit Conference was held and a declaration announced that, "the ever growing gap between communication capacities in the Non-Aligned countries and the advanced countries . . . has created a situation of dependence and domination . . ." Pinch, *The Flow of News: An Assessment of the Non-Aligned News Agency Pool*, 28 J. Com. 163 (Autumn 1978). A non-aligned news pool was then formed with the Yugoslavian agency, Tanjug, as its base.

After such actions, the United States began to lobby against the proposal. As Clayton Kirkpatrick, a member of the United States delegation, said, "Acceptance of the draft would put the moral sanction of UNESCO on the side of controlled and subservient mass media." Telephone interview with C. Kirkpatrick, Editor, *Chicago Tribune* (November 1980).

¹²² Tartarian, *News Flow in the Third World*, THE THIRD WORLD AND PRESS FREEDOM 18 (P. Horton ed. 1978).

¹²³ *Id.* Art. X: "States, institutions or groups which consider that the circulation of erroneous news reports has seriously impaired their action with a view to the strengthening of peace and international understanding and their efforts to combat war, propaganda, racism,

als for redressing communications concerns were also placed before the General Conference. These issues dealt with complaints against coverage of the Third World by suggesting mechanisms for improving the training and cultural awareness of all journalists and upgrading communication systems in the developing States.¹²⁴

In response to the sharp differences which emerged on the NWIO issue, and evidenced at the Nairobi Conference, a compromise Declaration on Mass Media was issued.¹²⁵ This was the first specific U.N. doctrine on mass media.¹²⁶ The Director-General of UNESCO was also empowered to appoint a commission for the study of communication problems.¹²⁷ This Commission (the MacBride Commission) was established in 1977 with a mandate to develop "measures aimed at reducing the communications gap existing between developed and developing countries and at achieving a freer and more balanced international flow of information."¹²⁸

The Commission held eight public sessions and published its final report (MacBride Report) in February 1980.¹²⁹ Eighty-two recommendations were made by the Commission to the 1980 General Conference in Belgrade.¹³⁰ Twelve issues on topics such as the protection of journalists and the scarcity of financial resources for development were also noted in the Report as requiring further study.¹³¹ Yet, once again, intense debate between developed and developing States precluded definitive action on communications.¹³² The Director-General of UNESCO said that there was "no need for immediate action at this stage,"¹³³ and postponed a vote on any of the MacBride Report recommendations until the 1983 General

and apartheid, should be able to rectify such news reports through the mass media." Art. XII: "States are responsible for the activities in the international sphere of all mass media under their jurisdiction." *Id.* Taken literally, such a principle would have made the U. S. Government responsible for any alleged libels published by Soviet correspondents in the United States as the Soviet Union tried to do. *See supra* notes 46-52.

¹²⁴ Tartarian, *supra* note 122, at 19.

¹²⁵ Androunas and Zassoursky, *UNESCO's Mass Media Declaration: A Forum of Three Worlds*, 29 J. Com. 190-91 (1979).

¹²⁶ Nordengtreng, *Behind the Semantics - A Strategic Design*, 29 J. Com. 195, 196-97 (1979).

¹²⁷ The MacBride Report, *supra* note 4, at c. 14.

¹²⁸ *Id.* at 295.

¹²⁹ *Id.* at 296.

¹³⁰ *Id.* at 253-72.

¹³¹ *Id.* at 273-75.

¹³² As an illustration, representatives of Western news organizations held a conference in Taillores, France to issue a counter declaration to UNESCO entitled "Voices of Freedom." N.Y. Times, May 24, 1981, at B3, col. 1. Declaration reprinted in Singh & Gross, "MacBride": *The Report and the Response*, 31 J. Com. 113-115 (1981).

¹³³ Power, *The U.S. View of Belgrade*, 31 J. Com. 144 (1981).

Conference in Venezuela.¹³⁴

The Belgrade Conference did approve two actions designed to implement aspects of the NWIO. First, under guidance of the UNESCO Secretariat, a compromise draft proposal was requested by the Conference whereby a UNESCO body would be created to issue identity cards to journalists that could be withdrawn if undefined codes of journalistic ethics were violated.¹³⁵ Second, the United States proposed a UNESCO-based clearinghouse for communication development assistance which was approved by the Conference.¹³⁶ The clearinghouse, termed the International Program for Development of Communication (IPDC), was designed to encourage voluntary assistance by developed States to foster the communications enterprises of developing States.¹³⁷ In effect, the West has exhibited a desire to direct the NWIO debates towards developing communications infrastructures along with adapting local requirements to the rapid advancements of communication technologies.¹³⁸

Contributions to the IPDC have come from the Netherlands, India, Mexico, and Iraq;¹³⁹ various U.S. press organizations claim that they have promised additional aid. As the IPDC develops, the U.S. delegation to UNESCO hopes to direct its policies toward practical assistance appropriately funded and devoid of political considerations.¹⁴⁰ A positive step in this direction was taken by the IPDC's first grant, issued in January 1982. One hundred thousand dollars was approved to assist in the formation of a Pan-African news agency designed to reduce dependence by African States on Western agencies for African news.¹⁴¹ One problem with this proposal is that few African States have sufficiently developed news agency resources to help this program and most African communication systems are State-controlled and geared to positive State news.¹⁴²

IV. THE MACBRIDE REPORT OF THE INTERNATIONAL COMMISSION FOR THE STUDY OF COMMUNICATION PROBLEMS

Arguably, a watershed in the NWIO debate was reached when the final MacBride Report to UNESCO was published.¹⁴³ It is the first com-

¹³⁴ N.Y. Times, October 23, 1980, at 1, col. 6.

¹³⁵ N.Y. Times, May 24, 1981, at E3 col. 1.

¹³⁶ Harley, *The U.S. Stake in the IPDC*, 31 J. COM. 150 (1981).

¹³⁷ *Id.* at 148.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *See id.*

¹⁴¹ Riding, *New Information Order: Debating Pragmatics*, EDITOR AND PUBLISHER 13 (Jan. 30, 1982).

¹⁴² SURVEY OF NATIONAL LEGISLATION, *supra* note 63, at 3.

¹⁴³ The MacBride Report, *supra* note 4.

prehensive study of international communication and serves to establish the parameters for future debates on international communication. In 1980, UNESCO member States were told to study the report so that it could serve as the impetus for declarations and international action taken on communications during the 1983 General Conference.¹⁴⁴

The MacBride Report is organized into five broad subsections: 1) a broad societal definition of communication; 2) a description of the forms and structures of communications and its participants; 3) a problem analysis on the operations of communications; 4) the institutional and professional framework; and 5) recommendations and issues requiring further study.¹⁴⁵ The first section of the Report colors those recommendations.¹⁴⁶ It is "receiver-oriented" with a philosophy that those who will receive communication will benefit from it. Access and equalization are, therefore, central to the final document; how to allow diverse peoples to reach and use communication structures and, once there, how to promote balanced use and coverage.

A. *A Cultural and Social Dimension to the Report*

An "impartial" press is a recent phenomenon in developed States. Political and governmental patronage in relation to national forces influenced most communications¹⁴⁷ until the influx of private capital, through advertising, permitted the development of a relatively politically neutral press.¹⁴⁸ The importance of advertising has yet to manifest itself in the Third World as an agent promoting independent thought.

As an illustration, India has an advertising market of \$93 million¹⁴⁹ as compared to a \$1,734 million market in the United Kingdom.¹⁵⁰ Western advertising agencies not only dominate their own domestic markets, but also control large percentages of developing markets and project Western philosophies on consumer goods and mass entertainment.¹⁵¹ Indeed, developing countries present an attractive market for expansion of both Western advertising and entertainment. Britain has begun to export television programs as a direct response to a stagnant domestic market and financial pressures.¹⁵² The British Broadcasting Corporation has,

¹⁴⁴ *Resolution of the UNESCO 21st General Conference on the Findings of the International Commission for the Study of Communication, excerpted in Power, supra note 133, at 146-47.*

¹⁴⁵ *The MacBride Report, supra note 4.*

¹⁴⁶ *Id.* at Pt. One.

¹⁴⁷ *See Dershowitz, supra note 59.*

¹⁴⁸ *Id.*

¹⁴⁹ SMITH, *supra* note 87, at 45-46.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 47.

thus, more than doubled its revenues in recent years.¹⁵³

France and the United States are other developed countries which are profiting from broadcast exports to developing States, perhaps benefiting from their economies of scale. These broadcasts are sold to, and broadcast in, developing States and play to an audience which is aware of differences in quality between domestic and foreign broadcasts, but which does not necessarily comprehend the cultural background of the foreign broadcasts. Few broadcasts from developing States, however, are shown to Western viewers.¹⁵⁴

Thus, a strong imbalance is apparent in the flow of communications. Equipment and technical expertise are too often foreign-controlled or supplied, often without sensitive adaptations to a local market. Literacy, linguistic and caste loyalties, elite and non-elite group schisms are all factors which fragment many developing States, and help to shape attitudes toward building communication within a modern State. Conversely, communication in developed States is predicated on a cohesive, mass audience. Yet, it is this developed economic and organizational model which has been introduced into developing States. The potential is for greater amenability on the part of those States toward the infiltration of Western patterns, at the expense of the receiving States' norms.

The MacBride Report notes that a central Third World complaint, expressed in the NWIO debate, is the frequent imbalance in the flow of communications.¹⁵⁵ On one level, this complaint may be labeled "news imperialism."¹⁵⁶ Olasope, new director for the Nigerian Broadcasting System, complains that:

The new states . . . and the Third World are today preoccupied with social and economic development. . . . To them, but not to the Western correspondents, this development is what is new and relevant. . . . The development, and indeed transformation that is going on all around, is hardly ever noticed while events or issues that are insignificant or that in no way contribute to the progress of the nation, but rather create a bad image, get interpreted from a Western point of view, and are blown up all out of proportion.¹⁵⁷

For newspapers have foreign correspondents due to the considerable expense involved.¹⁵⁸ Some 90 percent of daily international news is transmitted through four Western news agencies: Agence France-Presse

¹⁵³ *Id.*

¹⁵⁴ The MacBride Report, *supra* note 4, at 124.

¹⁵⁵ *Id.*

¹⁵⁶ For an explanation of this concept see, SMITH, *supra* note 94, at c.3.

¹⁵⁷ Tartarian, *supra* note 132, at 25.

¹⁵⁸ The cost of maintaining a foreign-based correspondent averages between \$150,000 and \$200,000 a year. *Newsday*, July 3, 1980, at pt. II/3, col. 1.

(AFP), Associated Press (AP), Reuters, and United Press International (UPI).¹⁵⁹ None profit greatly from the news operations, and only UPI is truly capitalistic.¹⁶⁰ Tass of the Soviet Union along with 120 other news agencies¹⁶¹ are peripheral to the NWIO debate over balanced communication flows.

These agencies have evolved by following and supporting colonial economic developments. As transportation systems and commerce developed in colonies, so did the agencies. Reuters, a trust owned by the United Kingdom press, has strong contacts in former British colonies.¹⁶² AFP, subsidized and partly controlled by the French Government, has made particularly intense efforts to cover former French colonies.¹⁶³ AP, a nonprofit American cooperative and UPI, a private American enterprise, supply much of their copy to American sources.¹⁶⁴

There is support for the notion that these agencies cover developed States more closely than they do developing States, and dispatch stories with a Western focus.¹⁶⁵ Journalists direct their efforts toward what they think is relevant and plausible in a given society; furthermore, a majority of correspondents are based in Western offices,¹⁶⁶ "where the news is."

Correspondents in developing States make extensive use of local information sources for their stories, sources which are often controlled by the government.¹⁶⁷ A foreign correspondent must also remember the perspective of the State from which he is reporting. Harassment and expulsion are not uncommon responses to "unfavorable" coverage¹⁶⁸ and na-

¹⁵⁹ UNESCO INT'L COMM. FOR THE STUDY OF COM. PROBLEMS, THE WORLD OF NEWS AGENCIES, Report No. 11 (undated).

¹⁶⁰ UPI was formed in 1958 as a result of a merger between the Hearst Corp., the International News Service, and the United Press Co. Scripps-Howard owns a majority of the UPI shares. N.Y. Times, May 25, 1958, at 1, col. 3.

¹⁶¹ Only AFP, AP, Reuters, and UPI transmit stories to all corners of the world and have a large variety of subscribers and foreign bureaus. Krolott and Cohen, New World Information Order 7, Report to the Senate Committee on Foreign Relations (Nov. 1977).

¹⁶² Bishop, *How Reuters and AFP Coverage of Independent Africa Compares*, 52 JOURNALISM Q. 654, 655 (1955).

¹⁶³ *Id.*

¹⁶⁴ See UNESCO, *supra* note 159.

¹⁶⁵ Bishop, *supra* note 162.

¹⁶⁶ The MacBride Report, *supra* note 4, at 146 n.1.

¹⁶⁷ Government officials are a prime source of information in any country. Further, restrictions on citizens' personal freedoms curtails the access of journalists to news. Accordingly, stringers are a major source of reports for agencies. UNESCO, *supra* note 159.

¹⁶⁸ Numerous accounts of harassment of journalists may be noted, such as the detaining of a freelance journalist in Bolivia on charges of defamatory libel following a coup. N.Y. Times, August 14, 1980, at 12, col. 1., a government refusal to allow journalists to use government-controlled transmission services where the stories were "against the Government." N.Y. Times, February 10, 1980, at 3, col. 1 and even the murder of a reporter viewed with suspicion by a government army fighting an uprising, the death of ABC News reporter Bill

tionals may be subject to more severe pressures. Yet, most agencies sell their reports through national agencies, which then relay them to subscribers, filtering out stories as they choose.¹⁶⁹

Foreign correspondents might breach local customs in their reportage, even using governmental sources of information. As one commentator complains, the root problem with news agency "coverage are [sic] usually a failure to present events within an African context or setting, emphasis on personalities rather than on problems, and the search for simple explanations of complex problems."¹⁷⁰ It might be argued that this is a problem central to all journalism and not isolated with regard to coverage of developing States.

The central complaint in the NWIO debate appears to be directed at news coverage of developing States by agencies which are: accountable only to predominantly Western subscribers, applying standards and news values that do not meet the needs of the societies covered, and in need of enforced accountability to ensure balanced communication flows.¹⁷¹ The MacBride Report stresses that communication is integral to developing a culture, be it in the Third World or in developed countries. However, to break through present cultural imbalances and harmful impacts of communication systems is a "long-term evolutionary" process of improving training programs and promoting citizen participation.¹⁷²

The IPDC represents a first step toward improving the quality of communication systems. Promoting citizen participation and mitigating the notion that people are generally passive recipients is a more difficult task. Most States proclaim free communication to be integral to their laws and institutions.¹⁷³ The MacBride Report proposes to promote this

Stewart in Nicaragua, in July 1979. *Newsday*, *supra* note 158.

¹⁶⁹ Up to 82 percent of news agency accounts enter foreign countries only through government-controlled channels. Reuters reports the highest percentage of sales to "unattached" subscribers at 27 percent. See Pinch, *supra* note 121.

¹⁷⁰ Segal, *Africa and the United States Media*, 6 ISSUE 49, 52 (1976).

¹⁷¹ On one level, this may be an editing chore such as an agency transmitting an account of former Chile President Salvador Allende, and describing him as a Marxist in the report. Some countries might disagree with this designation. Or, it may be a complaint that the reporting about the 1978 Jonestown massacre in Guyana was not placed in a context of Guyana's efforts to diversify its economy and populate wilderness areas.

Perhaps the strongest example of the Western media's alleged failure to report accurately a Third World or developing statehood ideology (when that was a major component of the story) is the coverage given to recent events in Iran. While there were notable exceptions, most Western news coverage repeatedly referred to major social reforms instituted by the Shah and the nation's support of him without examining such claims. Dorman & Omeed, *Reporting the Shah's Way*, 17 COLUM. JOURNALISM REV. 27 (1979). See also Said, *Iran and the Press: Whose Holy War?* 18 COLUM. JOURNALISM REV. 23 (1980).

¹⁷² The MacBride Report, *supra* note 4, at 246.

¹⁷³ See this text section II B.2.

free communication and cultural development by aiding the development of an international code of ethics for journalists, with policies and enforcement mechanisms free from government control.¹⁷⁴ Yet, according to one member of the MacBride Commission, such "excessive" or "exclusive" professionalization may in turn create barriers to the democratization of communication.¹⁷⁵

B. Recommendation 58 on Legal Measures to Promote Communications

As a method of promoting cultural development and balanced communication flows through the NWIO, the MacBride Commission states that "censorship or arbitrary control of information should be abolished."¹⁷⁶ This should be achieved through Recommendation 58:

Effective legal measures should be designed to: (a) limit the process of concentration and monopolization; (b) circumscribe the action of transnationals by requiring them to comply with specific criteria and conditions defined by national legislation and development policies; (c) reverse trends to reduce the number of decision-makers at a time when the media's public is growing larger and the impact of communication is increasing; (d) reduce the influence of advertising upon editorial policy and broadcast programming; (e) seek and improve models which would ensure greater independence and autonomy of the media concerning their management and editorial policy, whether these media are under private, public or government ownership.¹⁷⁷

At first reading, the Commission's Goal and Recommendation appear compatible with U.S. first amendment ideals.¹⁷⁸ Justice Stewart of the U.S. Supreme Court has written that, "[S]o far as the Constitution goes, the autonomous press may publish what it knows and may seek to learn what it can."¹⁷⁹ Furthermore, first amendment values "should mean at least this: if we must choose whether editorial decisions are made in the free judgment of individual broadcasters or imposed by bureaucratic fiat, the choice must be made for freedom."¹⁸⁰

The recommendation to diffuse the monopolization of communication purveyors is also consistent with the U.S. norm of the right of communication. Not only is the U.S. press subject to antimonopoly legisla-

¹⁷⁴ The MacBride Report, *supra* note 4, at 243.

¹⁷⁵ *Id.* at 244 n.2.

¹⁷⁶ *Id.* at 266.

¹⁷⁷ *Id.*

¹⁷⁸ U.S. CONST., amend. I.

¹⁷⁹ Stewart, *supra* note 24.

¹⁸⁰ *Columbia Broadcasting Sys. v. Democratic Nat'l Comm.*, 412 U.S. 94, 146 (Stewart, J., concurring 1973).

tion,¹⁸¹ but the United States, through such statutes as the Newspaper Preservation Act,¹⁸² also encourages competition between independent newspapers¹⁸³ and promotes broadcasting which is responsive to local needs.¹⁸⁴ Indeed, the U.S. Supreme Court has ruled that broadcasters are subject to regulation in the "public convenience, interest, or necessity."¹⁸⁵ One court has added that an important factor in permitting a broadcast outlet to retain its license is "superior past performance" as measured by the Federal Communications Commission (FCC).¹⁸⁶

The MacBride Report recommendation of limited control over advertising and private commercial decisionmaking similarly finds support in the American ideal. But, in the United States, control generally appears to be a form of banning only those advertisements that are either discriminatory¹⁸⁷ or contain false information about lawful activity.¹⁸⁸

To be sure, Recommendation 58 does conflict with the American constitutional construct. As legal support, the MacBride Report cites a U.N. General Assembly resolution on the right of correction containing "a principle that the points of view presented by those who consider that the information published or disseminated about them has seriously prejudiced their effort to strengthen peace and international understanding to promote human rights . . . be disseminated."¹⁸⁹ This principle is in direct contrast to the American right for the press alone to decide those messages which it will disseminate.¹⁹⁰

The U.S. constitutional framework is offered as setting minimal constraints on the right to communicate. If Recommendation 58 is compatible with the U.S. framework, within which communications thrive, it is indeed a workable principle for developing international communication freedom and balanced flows within a NWIO.

¹⁸¹ *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

¹⁸² *Newspaper Protection Act of 1970*, 15 U.S.C. §§ 1801-1804 (1976).

¹⁸³ For example, an administrative law judge reviewed the application of two newspapers in Seattle, Washington, for a joint operation. After considering the testimony of newspaper representatives as well as the balance sheets, the judge recommended to the U.S. Attorney General that the "merger" be permitted to sustain two competing "independent editorial voices" in Seattle (Under the Newspaper Preservation Act). Brandon, *Provisional OK Given to JOA in Seattle*, EDITOR AND PUBLISHER 9, Jan. 23, 1982.

¹⁸⁴ *Public Broadcasting Act of 1967*, 47 U.S.C. §§ 390-98 (1976).

¹⁸⁵ *National Broadcasting Co. v. United States*, 319 U.S. 190, 217 (1943).

¹⁸⁶ *Citizens Communications Center v. FCC*, 463 F.2d 822 (D.C. Cir. 1973).

¹⁸⁷ *Pittsburgh Press Co. v. Public Comm. on Human Rights*, 413 U.S. 376 (1973).

¹⁸⁸ *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm.*, 447 U.S. 557 (1980). *But see Metromedia, Inc. v. San Diego*, 49 U.S.L.W. 4925 (July 2, 1981).

¹⁸⁹ The MacBride Report, *supra* note 4, at 249.

¹⁹⁰ *Miami Herald Co. v. Tornillo*, 418 U.S. 241 (1974).

V. TELECOMMUNICATIONS AND THE NWIO

The MacBride Report recognizes that new communication technologies—computers, transborder data services and flows, satellites—“may one day facilitate breaking down barriers between persons and nations. That trend is without doubt irreversible.”¹⁹¹ New technologies raise anew the themes of the NWIO debate: reduced control by receiving States over the development of the communication systems, obstacles to citizen participation in operating the communications service, little availability of the service, and negative impacts upon traditional modes of communication. Although UNESCO has actively discussed broadcast satellites,¹⁹² and the MacBride Report devotes much consideration to telecommunication issues,¹⁹³ the International Telecommunications Union (ITU) remains the major international institution for addressing telecommunication issues.

A. *The International Telecommunication Union*

Telecommunications—communications via the electromagnetic spectrum—has long been a field requiring accommodation between the concept of nationalism and the benefits of an international communication system. Founded in 1865 to help regulate telegraphic transmissions across European national boundaries, the ITU expanded to fill this need.¹⁹⁴ The advent of radio, with its ability to travel across national boundaries and interfere with the transmissions of other States, posed additional regulatory needs.¹⁹⁵ Although the United Nations, in 1959, appointed a separate committee to study communication satellites,¹⁹⁶ the committee recognized that the ITU was best equipped to deal with radio frequency allocations in outer space.¹⁹⁷ Eventually, the ITU became a specialized agency of the United Nations and expanded its role to include regulation of radio, television, telephones, and satellites.¹⁹⁸

The ITU has foremost concerned itself with its technical, regulatory role. But this role cannot be isolated from present political and economic pressures. Participation in the ITU is on an equal basis, one vote per

¹⁹¹ The MacBride Report, *supra* note 4, at 31.

¹⁹² *Declaration of Guiding Principles*, *supra* note 117.

¹⁹³ The MacBride Report, *supra* note 4, at 57-68.

¹⁹⁴ Robinson, *Regulating International Airwaves*, 21 VA. J. INT'L L. 1, 6 (1980).

¹⁹⁵ International Telecommunications Convention of 1965, *entered into force*, May 29, 1967, 18 U.S.T. 575, T.I.A.S. No. 6267.

¹⁹⁶ G.A. Res. 1472A, 14 U.N. GAOR 5, U.N. Doc. A/4354 (1959).

¹⁹⁷ *Id.*

¹⁹⁸ International Telecommunications Convention of 1947, *entered into force* Jan. 1, 1949, 63 Stat. 1399, T.I.A.S. No. 1901, 30 U.N.T.S. 316.

member State.¹⁹⁹ In 1947, for instance, there were only 78 member States all bound by treaty to the ITU governing principles.²⁰⁰ Today, there are 154 members, many of which are former colonies of older, developed member States.²⁰¹

The ability of these new members to affect fundamental change in the ITU is circumscribed by jurisdictional and organizational constraints. For example, only the most technically advanced States have a present capacity for satellite systems. An interest in perpetuating this sovereignty supersedes any ITU designs to promote mutual cooperation.

1. The International Frequency Regulatory Board

Complaints have been directed by new members toward the fairness of the ITU's basic administrative regulations defining radio frequencies, allocating spectrums, and imposing technical requirements on operations.²⁰² Having primary responsibility for resolving these complaints is the ITU's International Frequency Regulatory Board (IFRB).

The Board operates a first-come-first-served system whereby a State applies for a radio frequency assignment and if that assignment would not interfere with another assignment, the applicant receives something akin to a vested property right to use that frequency.²⁰³ The IFRB is powerless to remove assignments not actually being used without the consent of the "owner" government.²⁰⁴ Assignments are monitored only by data supplied by member States;²⁰⁵ the ITU cannot compel members to supply this information.²⁰⁶

In addition, members are bound by ITU regulations only to the extent that their broadcasts "are capable of causing harmful interference to the services rendered by the stations of another country."²⁰⁷ Yet, any dis-

¹⁹⁹ The governing principles of the International Telecommunications Union may be found in International Telecommunications Convention, *entered into force* Apr. 7, 1976, 28 U.S.T. 2497, T.I.A.S. No. 8572 [hereinafter ITU Convention]. For an analysis of the background and administration of the ITU, see D. LEIVE, *INTERNATIONAL TELECOMMUNICATIONS AND INTERNATIONAL LAW: THE REGULATION OF THE RADIO SPECTRUM* (1970) [hereinafter Leive].

²⁰⁰ A. Rutkowski, *International Data Transfer, Satellite Communications, and the 1979 World Administrative Radio Conference*, in *THE NEW WORLD INFORMATION ORDER: ISSUES IN THE WORLD ADMINISTRATIVE RADIO CONFERENCE AND TRANSBORDER DATA FLOW* 3, 6 (Com. Media Ctr., N.Y.L. Sch. 1979).

²⁰¹ Honig, *Lessons for the 1999 WARC*, 28 J. Com. 48, 50 (1979).

²⁰² See Rutkowski, *supra* note 200, at 7.

²⁰³ See International Telecommunications Union Radio Regulations, *entered into force* Oct. 23, 1961, 12 U.S.T. 2377, T.I.A.S. No. 4893 at para. 607 [hereinafter ITU Rad. Reg.].

²⁰⁴ ITU Convention, *supra* note 199, at art. 33.

²⁰⁵ LEIVE, *supra* note 199, at 102.

²⁰⁶ See, e.g., ITU Rad. Reg., *supra* note 203, at para. 516.

²⁰⁷ *Id.* at paras. 700-15.

putes on regulations or interferences are settled outside of ITU channels and left to *ad hoc* diplomatic channels or various international treaties on dispute resolution.²⁰⁸ This procedure is used even though the IFRB maintains an objective body of independent technical experts to examine interference disputes as requested by concerned governments.²⁰⁹

Plenipotentiary conferences are ideally the ultimate forum for addressing the need for changes in the ITU.²¹⁰ However, since these conferences meet irregularly, approximately every five years,²¹¹ it is questionable whether the conferences can keep fully current on technical developments in communications. Nonetheless, the primary mechanism for adjusting regulations concerning spectrum allocations, and impliedly initiating policy changes for the ITU, is periodic world administrative conferences,²¹² the most recent being the 1979 World Administrative Conference (WARC).

2. The 1979 World Administrative Radio Conference

WARC convenes only once every 20 years.²¹³ In a broad sense, the Conference has jurisdiction over all radio regulations and is empowered to discuss issues of individual spectral assignments along with the global allocation of spectra to specific communication uses.²¹⁴ Underlying all Conference deliberations are four competing, yet overlapping, policy concerns: 1) a fair division of a limited international resource among competing needs and States; 2) the allocation of resources so as to maximize the positive impact on the quality of life; 3) alternatives to the spectral uses possible today which might be technologically obsolete in the near future; and 4) the maximization of cost/benefit efficiencies of each allocation decision.

Although each delegation averaged approximately 12 participants, this statistic obscures the complexity of the issues discussed and how developing States were not as prepared for the debates as were developed States. Honig, a delegate for the United States, said that developed countries had 49 percent of the delegates at WARC,²¹⁵ yet only 28 percent of

²⁰⁸ Members for instance may invoke an arbitration procedure provided for at ITU Convention, *supra* note 199, at art. 33 Annex 3.

²⁰⁹ ITU Rad. Reg., *supra* note 203, at para. 716.

²¹⁰ *Cf.*, Note, *The International Telecommunications Union*, 31 SASK. B. REV. 41, 47 (1966).

²¹¹ *Id.*

²¹² *Cf.*, Robinson, *supra* note 194, at 7.

²¹³ *Id.*

²¹⁴ *Id.* at 7 n.21.

²¹⁵ See Honig, *supra* note 201.

the votes.²¹⁶ The United States began preparations for the conference in 1973²¹⁷ and focused the interests of engineers, entrepreneurs, and politicians through a broad array of governmental bodies before finalizing a coherent policy.²¹⁸ By contrast, Ghana sent a two-man delegation to WARC; unable to devote its energies to the full agenda, these delegates focused on Ghana's potential interests in satellite broadcasting.²¹⁹

Satellite communications have indeed been a central focus of many WARC delegations.²²⁰ Only 35 years ago, Arthur C. Clarke wrote of a vision of geostationary satellites aiding international radio programming.²²¹ Today, technological developments have necessitated discussion of direct satellite broadcasts to individual homes.²²²

More importantly, satellite communication offers great potential for achieving a NWIO. Developing States might be able to utilize satellites to by-pass intricate and costly terrestrial communication infrastructures and achieve cost and service equality with developed countries.²²³ An allocation and regulation schema is important to reaching this possibility. Such a plan was even more important at the 1979 WARC if one considers that the decisions of that Conference will remain in place, impacting upon communication developments, until the next century and the 1999 WARC.

The International Telecommunications Satellite Consortium (INTELSAT) dominates present-day international communication service.²²⁴ Over 130 countries are serviced by this consortium which utilizes nonmilitary satellites.²²⁵ Projections²²⁶ of increased demands for domestic point-to-point communications—voice, data, electronic mail, and television—were beyond a major WARC discussion concerning proposals to make new allocations in a spectrum currently used by other services.²²⁷ This would permit developing States to receive spectrum rights in the

²¹⁶ *Id.*

²¹⁷ *Id.* at 48. *But see* Possner, *Legislative Involvement in Telecommunications Policy: the 1979 World Administrative Radio Conference*, in *THE NEW WORLD INFORMATION ORDER: ISSUES IN THE WORLD ADMINISTRATIVE RADIO CONFERENCE AND TRANSBORDER DATA FLOW 17* (Com. Media Ctr., N.Y.L. Sch. 1979).

²¹⁸ Possner, *supra* note 217, at 19.

²¹⁹ *See* Honig, *supra* note 201, at 50.

²²⁰ *Id.*

²²¹ Clarke, *Extra-Terrestrial Relays —Can Rocker Stations Give World-Wide Radio Coverage?*, *WIRELESS WORLD* 305 (1945).

²²² Rice, *Regulation of Direct Broadcast Satellites: International Constraints and Domestic Options*, 25 *N.Y.L. SCH. L. REV.* 813 (1980).

²²³ Snow, *INTELSAT: An International Experience*, 30 *J. COM.* 147 (1980).

²²⁴ The MacBride Report, *supra* note 4, at 288.

²²⁵ Robinson, *supra* note 194, at 18, 19 n.55.

²²⁶ *Id.*

²²⁷ *Id.* at 20-21.

new area, even though it might be years before they could develop satellites and exploit the frequency. Acceptance of the proposal would have entailed reducing allocations for radar and defense²²⁸ and relinquishing the frequencies for use in projected development as INTELSAT costs increased.²²⁹ The United States did not accept such reallocations,²³⁰ practicably blocking the developing countries' plan and maintaining the status quo.

At WARC, increased allocations were agreed upon for low-spectrum uses (called high-frequencies)²³¹ which include most radio and long-distance communications. Services such as shortwave transmissions have been valuable for administering farflung social programs and providing relatively inexpensive communication linkages. According to Glen Robinson, Chairman of the U.S. Delegation to WARC, such a reallocation might meet projected demand increases until the 1999 WARC.²³² However, increased allocations do little to alleviate the impact of the IFRB granting every country some frequency rights until the spectra are oversubscribed. Countries are not compelled to relinquish those frequencies for which they no longer, or not yet, have a use.²³³ Because of the deadlock on the NWIO debate, there was little progress made at WARC toward reforming the IFRB, satellite distributions, or creating a more equitable rationing of assigned frequencies.

B. U.S. Regulatory Impact Upon International Telecommunications Decisionmaking: The Federal Communications Commission and Rate Making

Satellite allocation discussions indicate the importance of the U.S. position at WARC relative to Conference outcomes. Honig criticizes the American delegation for virtually ignoring social input and concentrating on issues "relative to political and technical criteria."²³⁴ These U.S. positions, so important to WARC, were in turn largely determined by the Federal Communications Commission (FCC) and related agencies.²³⁵

²²⁸ *Id.* at 21-22.

²²⁹ *Id.* at 20.

²³⁰ *Id.*

²³¹ *Id.* at 28-30.

²³² *Id.* at 28-33.

²³³ ITU Rad. Reg., *supra* note 203, at para. 620.

²³⁴ See Honig, *supra* note 201.

²³⁵ The United States prepared for WARC through the regulatory process. The FCC has the power to assign domestic frequencies and regulate, based upon agreements with foreign telecommunication units. Yet, the Commission remains limited to acting in the public interest.

The State Department has the specific assignment of representing the United States in negotiations with foreign governments and international bodies on telecommunications is-

International communication is relegated to a minor regulatory concern for the FCC. The Agency's mandate is to regulate "interstate and foreign commerce in communications by wire or radio."²³⁶ Technological advances in these areas are generally considered when the regulated common carriers inform the FCC of such improvements. The FCC is also empowered to regulate the Communications Satellite Corporation (COMSAT),²³⁷ trustee of a national, private profitmaking system.²³⁸ This power concerns access and use of the satellite system,²³⁹ ratemaking and accounting matters,²⁴⁰ and provision of services to international locales.²⁴¹ Overall, the FCC is that regulatory body which responds to technological policies developed by the international carriers—including AT&T, IT&T, and COMSAT—as they operate autonomously and at a pace arguably ahead of the government's ability to regulate consequences.²⁴²

The character of this approach to international telecommunication is built-in complexity and delayed response to immediate problems. Foreign telecommunications units, so often combining regulatory and operational entities, tend to operate homogeneously.²⁴³ In contrast, when they seek to close a deal with private American concerns, the foreign units must consider: first, that American corporations must be responsive to shareholders; and second, that the FCC will only then begin its application review process which might result in FCC approval. Furthermore, foreign officials regard FCC decisions, whether on a specific U.S. corporation agreement or general policy, as an "arbitrary practice of making decisions without regard for the views held in [a] distant country."²⁴⁴ Consequently, the governmental body with primary telecommunications responsibility is mired in delay and accused of ignoring the international impact of its decisions.

sues. Exec. Order No. 12,046, 3 C.F.R. 158, 164 (1978). In this respect, the Department generally acts as a troubleshooter on foreign policy issues and also advises the FCC on satellite communications for foreign points. 47 U.S.C. § 721(c)(3) (1976).

The National Telecommunications and Information Agency (NTIA) is assigned the task of coordinating all preparations for international telecommunications negotiations, but it is limited to an advisory role.

²³⁶ Communications Act of 1934, 47 U.S.C. § 152(a) (1976).

²³⁷ Communications Satellite Act of 1962, 47 U.S.C. §§ 731-44.

²³⁸ *Id.* at § 731.

²³⁹ Communications Act, *supra* note 236, at § 721(c).

²⁴⁰ *Id.* at § 721(c)(5).

²⁴¹ *Id.* at § 721(c)(3).

²⁴² For the purposes of this Note, the FCC is concerned with preserving competition among common carriers, not expanding the frontiers of legal thought on telecommunication issues.

²⁴³ See Robinson, *supra* note 194.

²⁴⁴ Grad & Goldfarb, *International Communication*, 15 COLUM. J. TRANSNAT'L L. 384, 453, quoting 41 Telecommunications Rep. No. 11 at 30-31.

The FCC is charged with maintaining "just and reasonable rates."²⁴⁵ Yet, to illustrate its bureaucratic entanglement, the FCC has not conducted a review of its response to international rate structures since the *Western Union* case, 25 years ago, despite intervening technological change.²⁴⁶ Traditional rate regulation is based upon a return on capital-intensive activities. But should the same structures for coaxial cables, as an example, be applied to satellite rates with their larger research and development cost structure as components?

FCC policy had a significant international impact when the Commission ruled that COMSAT would be permitted to market its circuits primarily with carriers (such as AT&T), who in turn market the service directly to the public.²⁴⁷ COMSAT applied for its tariff, however, this review extended over a 10-year period²⁴⁸ and concluded with a rate reduction order.²⁴⁹ Subsequently, this reduction was ordered²⁵⁰ to be passed along to customers.

The immediate results of these actions were twofold. First, common carriers developed a decided preference for cable use because although lease payments to COMSAT are not included in carrier rate bases, the physical development and use of cables is included in the rate base, permitting a greater profit. Second, although American carriers were ordered to pass along cost savings, foreign carriers which joined in the planning of facilities and the sharing of operations are not under this obligation and may develop differential rates.

Satellites have numerous advantages over present coaxial cables: greater capacity, ability to transmit more than one signal, and coverage for more than two fixed points. There are, however, disadvantages as well: satellites are considerably more expensive than cables, cannot result in as strong a rate base, and since INTELSAT controls satellite circuits, national carriers have less control over them than over privately-financed cables.²⁵¹

Initially, the FCC responded to the international cable and satellite usage differences by ordering carriers to activate only one cable circuit for every five unused satellite circuits which were activated.²⁵² This action ensured FCC compliance with the Communications Satellite Act of

²⁴⁵ Communications Act, *supra* note 236, at § 201(b).

²⁴⁶ In re *Western Union Tel. Co.*, 25 F.C.C. 535 (1958).

²⁴⁷ In re *Authorized Entities and Authorized Users under the Communications Satellite Act of 1962*, 4 F.C.C. 2d 421, 435-36 (1966).

²⁴⁸ In re *Communications Satellite Corp.*, 56 F.C.C. 2d 1101, 1103 (1975).

²⁴⁹ *Id.* at 1183-86.

²⁵⁰ *Id.* at 1186-87.

²⁵¹ Note, *The Communications Satellite Act of 1962*, 76 HARV. L. REV. 388 (1962).

²⁵² In re *TAT-5 Project Proposal*, 11 F.C.C. 2d 957 (1968).

1962²⁵³ and, as such, enhanced the benefits of satellites to the public. Nonetheless, the FCC continued to exacerbate tensions with foreign telecommunication entities: these were only nominally assuaged by the 1976 revised guidelines. These revisions provide for diversity of circuit utilization and considerations of international comity.

VI. CONCLUSION

The legal framework of the NWIO debate will surely continue to temper its practical outcome, although a wide range of communication system working models does persist. Throughout the debates, though, sovereign States retain the power to shape domestic laws and regulations and do no more than modify international standards to conform to their own models.

Yet, it is true that technological change is modifying traditional notions of international communication. These new technologies provide quantitative and qualitative transformations in communication flows and offer dramatic possibilities for redressing acknowledged communication imbalances.

The 1979 WARC and ongoing UNESCO discussions which have addressed imbalances have had a fourfold impact upon international law. First, the compromise declarations on mass media from recent UNESCO Conferences have placed the rights and responsibilities of the mass media within the overall parameters of international law. Standards of conduct and protection, albeit vague, are now embodied in official U.N. documents and are no longer subordinate to the larger debate on human rights principles.

Second, new regulatory concepts have been introduced to international agencies which have accordingly begun to modify their longstanding precepts of organization and function. The ITU, and correspondingly the FCC, has begun to consider redefining types of satellite services and ratemaking formula. Economic and cultural concerns are impacting upon the engineering concerns of the technically-oriented WARC. The United States and its allies are unable to deny their financial outlays to UNESCO and the ITU, and have learned to effectively negotiate for their goals within these pluralistic organizations.

Third, deficiencies in international decisionmaking have been highlighted. The ITU is without true enforcement power to equitably distribute and monitor frequency assignments and spectrum allocation. Traditional diplomacy and treatymaking on an *ad hoc* basis prevails over any institutionalized enforcement mechanism, objectively balancing and judging disparate claims. Similarly, UNESCO has only been able to issue

²⁵³ Communications Act, *supra* note 236, at §§ 741-44.

declarations on communication which are but one step in the process of developing a binding treaty.

Fourth, the cumulative effect of these debates shall intensify in subsequent decades. The MacBride Report provides a conceptual basis for discussion by which the gross imperfections of the present world information order may be addressed. It makes concrete recommendations which are compatible with a "free flow of communication" somewhat more balanced than are communication flows at present. Also, an agenda is proposed in place of technology itself, for "practical" changes in communication arrangements.

In retrospect, one is amazed that there is any coherent debate dealing with communication flows. So diverse are the governmental interests involved and the avenues by which claims may be raised, that the MacBride Report assumes an enhanced importance in the international legal arena. Coupled with the WARC, different legal concepts of a right to communicate, and the influence of the communication technologies are all adding direction to a new world information order.