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Human Rights and the Right to Communicate

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Knowledge and human power are synonymous. Francis Bacon, *Novum Organum*, Aphorism i, 1620

Bacon's recognition of the fundamental role of knowledge in the paradigm of power could be said to be the seed that germinated this paper. From this grew my belief, although not originally my own, that a material model of communication set in a social ecology would avoid "both the vulgar determinism and economism" of other social paradigms and better account for social history and the relations in and between states.¹ In such a social model, communication is the bridge between knowledge and power. In that sense, communication creates power: power influencing the role and relations between nations, between the dynamics of different groups within nations, and the power for individuals to reach their full potential.² In the international context, when considering international power and relations between states, some writers argue that international communication and its various by-products are, in fact, "the root of state sovereignty."³ Therefore, relations within and between states are greater than the behavioural, functional, or corporatist paradigms suggested by non-material theorists of political economy.⁴ Power is more than the ability to determine what issues government addresses or who succeeds in putting an issue on the political agenda. A greater power exists in controlling the possible range of concepts that a nation or society will even consider to avert to for its agenda.⁵ Steven Lukes defines this as the third dimension of power. Ultimately, determining what is communicated and how it is communicated is the manifestation of such power.⁶

The implication of this notion of power for domestic law seems fairly clear. With this power those societal interests that manage to directly or indirectly dominate the means of communication will control the range and development of rights and laws. Without fully accepting this broad approach, I believe at a minimum, communication plays a critical adhesive function in any social order.⁷ In the international system,⁸ which has its own social order based on formal and informal relations, custom, treaties, and other international law, the implications of this understanding of communications are great. Indeed, if knowledge truly is the basis of power this could be the single most important issue in international relations.⁹

Currently, there exists a gross imbalance in communication and information flow. Developed, westernized nation-states dominate the international communication system and as a result dominate the international power structure.¹⁰ Developing states hoping to have full,
sustainable economic development believe this imbalance increases the risk of greater socio-economic dependence upon the West furthering political and cultural imperialism. Recognizing this bias and its implications in international relations, the United Nations Education, Science, and Culture Organization (UNESCO) focused on developing the emerging human right, the right to communicate, in the hope that empowering developing states in this way would assist them in alleviating the problems of development.

This approach is a markedly different attempt in the international effort to resolve the power imbalance and the overwhelming development gap. Previous efforts had consistently focused on the arid options of developing economic policy and economic rights. In the face of growing internal debt, the success of economic policies is low, and any substantive development is usually remote and peripheral to the pressing need and scale of the problems to be addressed. In addition, the attempt to promote economic, social, or cultural rights under such conditions often results in obscuring adherence to any fundamental human rights at all, confounding the development of the Third World further. With full sustainable socio-economic development as the goal, the economic policies fail in the face of an increasingly hostile and rational international market. The right to communicate and the New World Information and Communication Order (NWICO) are the products of a process where Western intellectuals and developing states look for other solutions to effect positive political, economic, and cultural change in the alienated regions of the world.

Developing states want recognition of the right to communicate within international law. They demand equal access and equal opportunity to have their point of view communicated in the international community. Their conceptualization of this right is an international agreement justifying the control and limiting the use and access to information and mass communication systems. They hope to legitimize their control of the flow of communication into and leaving their states and want an agreement that would allow for an equitable distribution of communication technology and resources throughout the world.

This policy is diametrically opposed to most developed states' policies on communication: free and open communication is "an essential instrument for furthering understanding among the peoples of the world and encouraging the growth of free, equitable and enlightened government." One writer notes that the developing state's agenda is an attempt to turn back the clock to an earlier "era when a divinely ordained state was the foundation of all wisdom and the great mass of people lived in poverty, neglect and ignorance."

UNESCO's role in this debate is unique. Pushed by its members, the majority of whom are representative of developing non-aligned states, and fuelled by the Western states' finances, UNESCO developed the right to communicate (through NWICO) by converging the agenda of the developing states- a rhetoric full of anti-imperialist sentiments with the Western concepts of liberty and democracy. With this dialectic,
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the policy of the NWICO faced a great deal of conflict and is now essentially gone from the international landscape; fortunately, the right to communicate has carried on.

The debate generated by NWICO raises a number of questions about the right to communicate in international law: first, what is the right to communicate? Second, if it has not disappeared from the international landscape, to what extent does the right exist and how best should it be adopted and implemented? And, third, what implications does this right have for the development of state actors and the recognition of human rights? The potential scope for such a discussion is vast. I intend to give a brief history of the development of the right to communicate, a consideration of the ideological constraints affecting the debate in international law, and will consider the present status of the right and the effective steps that could be taken to put this important issue back on the international political agenda.

I will show that the right to communicate has two manifest forms: one individual and one collective. I will argue that as a right it must be implemented as a positive right; any manifestation that allows for the formal recognition of limitations and control as those referred to by developing states will have serious consequences on the future development of international human rights and adherence to international law. Indeed, as Jeremy Bentham said over a century ago, where there is no witness there is no justice because such wisdom is the very root of justice. If the stated goal of developing states is to gain a greater share of international power, thereby aiding indigenous socio-economic development, an approach to the right to communicate as viewed through a policy like NWICO will result in further socio-economic stagnation and alienation in the international community.

THE HISTORY OF THE RIGHT TO COMMUNICATE

The Right to communicate germinated in UNESCO, but grew from the individual rights expressed in Article 19 specifically, as well as Articles 20, 21, and 18 of the Universal Declaration of Human Rights. UNESCO is an intergovernmental body with various responsibilities within the fields of its competence as defined by its Constitution. These include socio-economic, cultural, educational, and science areas. The Economic and Social Council coordinates UNESCO, and thus UNESCO reports indirectly to the United Nations General Assembly. UNESCO is properly considered to be the United Nations technical advisor for areas within its constituted competence. These areas include communication.

The preamble to the constitutional agreement of UNESCO-created in 1945-recognizes the power of information and communication in the relations between states:

...since wars begin in the minds of men, it is in the minds of men that the defence of peace must be constructed...the State Parties to this construction believing in full and equal opportunities for education for all, in the unre-
stricted pursuit of objective truth and in the free exchange of ideas and knowledge, are agreed and determined to develop the means of communication between their peoples... for the purpose of advancing, through educational, scientific and cultural relations...the objectives of international peace and of the common welfare of mankind...”26

UNESCO’s mandate for human rights advocacy is also found in its Constitution:

The purpose of the Organization is to contribute to peace and security by promoting collaboration among nations through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.27

The Constitution empowers the agency to achieve this by “collaborating in the work of mutual knowledge and understandings of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image.”28

Using this power, UNESCO brought forward the Declaration on the Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War.29 This declaration, officially recognizing the NWICO policy, was a response to the developed world’s dominance over information and communication systems throughout the developing world. It was also an attempt by a majority of developing states to justify state control and censorship of information and communication flow in the face of Western criticism. Using UNESCO’s mandate for open and unfettered communication between peoples and cultures, this policy grew and developed.

The right to communicate’s genesis occurred when a group of Western intellectuals meeting under the auspices of UNESCO recognized a number of specific trends in the international system.30 They recommended an international agreement to avoid continued dependence by developing states on the developed Western world. This recommendation recognized a need for balanced communication flow between the developed and developing states.

Up to that point, the standard in international law governing information and communication was the free flow of information set out in Article 1(2) of the UNESCO Constitution outlined above. The free flow standard is evident in the early General Assembly Resolutions aimed at promoting communication development in the 1950s and 1960s.31 The
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Declaration of Guiding Principles on the Use of Satellite Broadcasting for Free Flow of Information, the Spread of Education and Greater Cultural Exchanges specifically utilized the free flow language:

Article V
1. The object of satellite broadcasting for the free flow of information is to ensure the widest possible dissemination, among the peoples of the world, of the news of all countries, developed and developing alike.32

Free flow remained the standard until at least 1975 but with the steady emergence of theNWICO it began to change through the 1970s. In 1970, UNESCO authorized assistance for developing countries to formulate mass communication policies based on the balanced flow recommendations.33 This resulted in an increased consciousness among the developing state leaders about the significance of communication to state sovereignty and the germination of NWICO. Therefore, it was no surprise in 1973 when the dominant issue at the Fourth Conference of Heads of State of the Governments of Non-Aligned States was communication. The conference adopted the following resolution:

Developing States should take a concerted action in the field of mass communications on the following lines...

a. Reorganization of existing communication channels which are the legacy of the colonial past and which have hampered free, direct and fast communication...

c. Take urgent steps to expedite the process of collective ownership of communication satellites and evolve a code of conduct for their use.34

At their following meeting in 1975, the Non-Aligned States made a similar declaration, one moving further from the free flow standard:

Public information and mass communication media are invested with an exceptionally important role in the common struggle for liberation, development and the laying of new foundation for the creation of more equitable international relations.35

Using their majority in UNESCO, developing states approved the Non-Aligned News Agency Pool (NANAP) at the Ninth General Conference of UNESCO.36 This approval was significant because the Constitution of NANAP was established on a balanced flow principle. This was the first time UNESCO or any other United Nations body embraced the idea of a balanced rather than free flow as was the standard of customary international law up to that time.37 Later that same year, UNESCO again embraced the balanced flow standard:
It is important that the mass media be responsive to concerns of people and individuals in the establishment of a new equilibrium and greater reciprocity in the flow of information which will be conducive to the institution of a just and lasting peace and of the economic and political independence of developing countries.38

UNESCO continued to push for a standard change. In 1978, it adopted a resolution endorsing efforts to establish a new, more just and more balanced world information and communication order.39 Later, UNESCO completely embraced the policy of the NWICO, ergo fully adopting the balanced flow standard for international communication agreements:

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.40

Little has happened with this policy since. The United States' withdrawal from UNESCO, which meant a twenty-five per cent reduction in the UNESCO budget, is commonly cited as the reason the standard of balanced flow appears to be in limbo. The one body that clearly grew out of the NWICO, the Intergovernmental Council of the International Programme for the Development of Communication, promotes the free flow standard once again. Furthermore, The MacBride Report (1980), a comprehensive UNESCO initiative investigating communication problems, does not fully condone the NWICO approach. Today, UNESCO is attempting to get American support back. The current Director-General, a Canadian, is attempting to move quietly away from the balanced flow standard. In spite of these trends, the debate over the right to communicate is still active in international law and demand still exists to re-evaluate the existing global communication system in consideration of this right.

The right to communicate has not disappeared from the international landscape. It is one of several emerging human rights developing and evolving as our thinking about human rights changes.41 These rights infuse a human dimension into customary international practice, an area traditionally left to laissez-faire relations or state control:

They may be invoked against the state and demanded of it; put above all...they can be realized only through the concentrated efforts of all the actors on the social scene: the individual, the state, public and private bodies and the international community.42
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By infusing a human dimension one general characteristic emerges common to these new rights. They embody both an individual and a state or collective element. In that sense all embody the similar polarized dichotomy that is evident in the right to communicate: "tension between an individual's need to communicate and societal need to establish its own channels of communication and expression."43

Information or Communication?

Very often information and expression rights are interchanged with communication rights. In the traditional version of information law, much of the discussion centres around freedom of information and the free flow of information from the Universal Declaration of Human Rights, Article 19:

Every one 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 regardless of frontiers.[emphasis added]44

This article embodies free flow in the right to seek, receive, and impart opinions and information through any means. In recent years, with the advent and reliance on new and faster means of communication, the shortcomings of this unilateral approach are being forced to change.45 Clearly, a concept more comprehensive in its approach is required.46

Most writers consider the right to communicate has greater scope than the rights enumerated in Article 19. For example, the MacBride Report recognizes this even though it also states that the right to communicate is far from being an already well established principle. It is possible to suggest that this right will be an addition to the already existing rights of information, privacy, free expression, and free association.47 Today, a new step forward seems possible:

Recognition of man's right to communicate, deriving from our latest victories over time and space and from our increased awareness of the phenomena of communication... Today it is clear to us that it encompasses all these freedoms of information and expression but adds to them, both for individuals and societies, the concept of access, participation, two-way information flow - all of which are vital, as we now sense, for the harmonious development of man and mankind.48

I use information and information rights in that sense- as a subset of communication. While it may be true that "the free flow of information is perhaps the most significant component in the concept of the right to communicate,"49 the right to communicate "is a wider
What is the Right to Communicate and Should it be a Right?

There is the argument that too many rights trivialize the notion of such rights. While I recognize that this argument may have some merit, I believe that as our concept of human rights changes so too should the specific human rights we address. The social contract of today is different from the social contract years ago and different yet again from that of a century ago. Over time, even so-called fundamental rights may change. The right to life, for example, differs between societal groups. As medical technology improves, as the ability to provide food, medicine and shelter to each individual increases, and as ethical issues evolve, the concept of the minimum standards of life are also likely to change within and between societal groups.

Awareness of ourselves as individuals and members of a greater collective is changing as communication technology improves. In this context, it follows that related rights should also change to meet the different circumstances. Such changes would allow individuals to develop and achieve their full potential within the new evolving social arrangement and allow societies to develop their own means of expression. The right to communicate is part of the evolving rights process, necessary in the exponential expansion and democratization of communication throughout the world.

Accepting that there is a need for a right to communicate is simple; defining the right is difficult. There is agreement in principle that the right to communicate or its constituent parts should be protected. For example, the domestic legal systems of such diverse states as the United States, Somalia, and Jordan recognize various forms of this right. Furthermore, most regional instruments recognize information and expression rights. The African Charter on Human and Peoples Rights, for example, expressly states such rights. How to implement such rights is another matter. Considering the constituent rights of information one writer notes:

All governments seem to agree that freedom of information is a fundamental right, that peoples should be fully informed, that free interchange of information and opinion is apt to promote the peace and welfare of mankind and that the media of information should be made to avoid false or distorted reports of the dissemination of opinions inciting to war or hatred between nations. As regards, however, the means of achieving a situation within nations and amongst them, characterised by a free and abundant flow of truthful information and useful interchange of opinion, there is no general agreement. The concept of freedom of information as a legal concept is strongly controversial.
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Following from this, should the right to communicate be manifest as a form of guarantee to ensure the maintenance of other fundamental rights? One could say that without communication there would not be any human rights:

Information precedes every reform. Oppression and discrimination must be communicated before they can be eliminated. The evils of unrestrained liberty must be demonstrated before safeguards can be devised.

Given the above relationship, should communication be considered one of the most basic rights an individual can possess? Much of this debate about communication can be distilled into the definition of a right generally and the degree to which a right should be incorporated into the nation-state.

In the development of the common law, the word 'right' has two distinct branches. As far back as the Codex Justinianus the distinct legal and moral branches of a 'right' were delineated. The extent to which both branches are present or whether one or the other is absent bears on the particular human right considered. Different ideological, cultural, religious, or national systems manifest the same human right differently. What is for one system a fundamental human right established on individual moral entitlement, a second culture or national system could define in the context of collective or state powers. Such fundamentally different approaches to the nature of the right to communicate rest at the core of the definitional problems.

The Right to Communicate in the International Community

There are essentially three general legal approaches to the consideration of human rights: as state rights, individual rights, or as collective rights. In the right to communicate debate these correspond to three ideological models: the Socialist approach, the Development approach, and the Western approach.

The Socialist Approach

The basis for socialist or neo-Marxist human rights is state-granted rights based on collective economic rights. The premise behind this basis is that only through the collective can individuals attain their full potential. Socialists view the right to communicate as "a social phenomena strongly shaped and defined by the socio-economic conditions, ideological assumptions and cultural values of a country." Because "it is not the way people communicate that determines the social structure, [but] the social structure that determines the way people communicate," socialists view the right to communicate as a product of the social structure and, therefore, a commodity to be used and controlled by the state. The right to communicate is coupled with an
individual’s duties and obligations to develop the greater good of the collective.

The right to communicate does not have an international application in the socialist model. One writer notes that juridically speaking the “right to communicate partakes of the nature of national [domestic] law and this concept cannot, therefore, be used in a system of public international law.” For example, before Glasnost, the Soviet policy on the developing law of communication and information held it was more appropriate to use the concept of the right to inform, which was a state right, in international law.

Socialists find comfort within international law for the basis of this approach. Article 29 of the Universal Declaration of Human Rights allows for limits on any right in accordance with the requirements of public order. In the socialist approach, public order is the essential basis of the socialist system. This is not unusual in and of itself; the reasonable limits clause of Section 1 in the Canadian Charter of Rights and Freedoms is an example. Notably, however, the Canadian order is secondary to individual rights and freedoms.

The drawback with this material approach to understanding communication in society is that it is essentially a two-dimensional approach to communication’s cause and effect in society. It does not account for the multidimensional effect of communication and information in a social system that grows and learns and develops as communication feeds back into the communication process developing independently of the social order or as a corollary to it.

The Development Approach

I do not attempt to develop a precise model for the wide and disperse countries of the developing world. Yet, there is one cohesive theme threading through the rhetoric of most developing states: the relationship of development and dependency. Developing states desire social and economic development to break their dependent relationship with developed states.

Communication, and the mass media specifically, is viewed as a predominant vehicle to act as a catalyst for development and break dependency. Unchecked communication growth promotes cultural imperialism which developing states see as contrary to Article 1 of the International Covenant on Economic, Social, and Cultural Rights. Ideally, developing states view the right to communicate as having a constructive role to play in development, the communication of information about technological improvements, communication about policy alternatives, and economic rationalization. Individual rights exist, subservient to collective rights, to serve the growth and development of the state.

Because a stable state is required for development, openly challenging the state or advocating a position that contradicts state authority runs contrary to the constructive role the right to communicate should play. A practical result of this approach is the development
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of the so-called "developmental journalist." As with the socialist approach the right to communicate is a permissive right: a legal right that permits constructive input to "emphasize the positive, the possibilities of achievement and getting the job done." Unlike the Socialist approach to communication where the means of communication are said to be structured by society, developing states give communication a specific task. Its task is as an educator and leader in public discussions on structuring society using the state's agenda. The right to communicate grows out of this conceptualization.

Common to both approaches is the attempt to control the means of communication by the state systems. Socialists manifest the right to communicate as a reaction against the capital controlled means of communication that promote the interests of the elite class. In the development approach, the right to communicate is a reaction to Western capital controlled communications systems that promote the interests of developed states at the expense of the developing states. Because of the bias against developing states, advocates point out that the right to communicate must benefit the social whole first and then be used as a means of self-expression for the benefit of individuals. In short, the rationalization for this point of view is that states are not yet stable enough to allow free communication. In both models, reaction to non-state controls and domination is paramount.

The groups advocating either framework often protest against the established international norms codified within legitimate international power structures as international law. The extent to which the international legal process is culturally, politically, and economically biased is a point weighed heavily in favour of both approaches. However, I cannot ignore that states, claiming that such a bias exists, at the same time utilize the international system of law for their benefit when it suits their interests.

In fact, the history of communication control in much of the developing world has had little to do with the benevolent concerns of the state to promote the greater good of the collective and more to do with simple state repression and abuse of power. Indeed, closing off information makes it virtually inevitable that wrong decisions will be imposed and that authority will be tempted to abuse its powers...[and] citizens deprived of information be lured to support an authority which conceals its abuses from them.

Ultimately, "ruling elites become aware that their limited resources and fragmented institutions have made underdevelopment a chronic rather than a transitory ailment." The costs to the ruling class of relinquishing any political power is too great because money is made through political office and controlling the means of force. Under such conditions nationalistic rhetoric is common as leaders attempt to hold on to political power and positions of influence.
Rhetorically and in theory there are clear lines of delineation between the developing state and socialist views of the right to communicate. In practice, however, they differ little from one another: both are rationalizations for controlling and maintaining state power.

**The Western Approach**

Here, the right to communicate is based on individual entitlement to a right that permits a claim against the state. The formulation of this right can be traced to the long standing rights of a free press, freedom of expression, freedom of association, and freedom of conscience found in the constitutions of most Western developed states and in international instruments of law.

Advocates of this view note its deep roots in law. For example, in the *Declaration of Rights of Man and of the Citizen* declared in France in 1789 it was noted:

> men are born and remain free and equal in respect of rights and the unrestrained communication of thoughts or opinions being one of the most precious rights of man, every citizen may speak, write or publish freely, provided he be responsible for the abuse of this liberty in the cases determined by law.78

Furthermore, the right to communicate in the West is intimately tied to the history and development of law through the various stages in the evolution of communication technology. One extension of Harold Innis' Empire Theory shows that changes in the mode of communication were directly responsible for evolutionary developments in law.79 For example, Guttenberg's development of print using movable type in the mid-1400s had an immediate and profound impact on the spread and administration of the law.80

Western history demonstrates that the development of democracy parallels the democratization of communication made possible through new communication technology. Communication has undergone tremendous expansion from the limited access and control of the printing press. It expanded from limited control and possession of a minority to use and accessibility of the majority.81

Following the evolution and expansion of communications technology, advocates argue that recognition of the right to communicate is the next logical step in the evolutionary growth of the rights enumerated above: freedom of expression, freedom of the press, and so on. It follows that as the means of mass communication become more available to the individual citizen, and the communication process is democratized further, a greater law must evolve to account for such changes.

What are the legal implications of these changes? On its face it appears that such a right, taken to its logical conclusion, implies that an individual could demand access to the means of communication and have an individual action against the state when such access is denied.82
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Critics in developing states view this situation as unworkable because they simply do not have the resources to meet the requirement that each individual or group must receive a fair share of the communication capacity. The right would also be unworkable in international law, for it "presupposes the availability of adequate facilities and their equitable distribution within and between societies."83

However, advocates in developing states see it as a means of establishing "a legal claim for individuals and groups to participate in the communication institutions of their respective societies."84 They formulate the right to communicate so that it is a right to a share of available resources. This formulation constitutes a sharing of technology and information between states, as well as states with individuals, but it is more. The consequence of such recognition is that the inclusive rights such as access to information, right to free speech and free expression, the freedom to hold and disseminate information, and the right to privacy will also benefit. Furthermore, it allows an opposing voice in one-party states to limit state aggression and develop adherence to justice and the rule of law.

The right to communicate in the context of the developing nations confirms a duty on government to facilitate all means of open communication. This duty begins with simple non-capital intensive policy changes such as opening up the scope and degree of communication and information disseminated within and by the state. Such changes carry no economic cost.

Does this fact imply the Western approach is better? The view from developed states is quite ethnocentric in nature. When advocates speak of deep roots in law they fail to recognize that many developing states also have their own deep legal histories. Such histories are not likely to condone the degree of censorship and repression that exists in much of the developing world today. However, it is possible that communication may play a fundamentally different cultural role in other non-Western social orders.

The West operates on the assumption that a right to communicate, manifested as an individual right, is the logical growth of the right to information and free expression. However, the fact remains that in the West we have not achieved freedom in the requisite rights of information or free expression. There are both direct and indirect means of controlling communication flow in our social and state systems. Some writers argue that Western states are the greatest offenders of access to open and free communication because of control through indirect means. As examination of the development and use of 'privileged' information illustrates, the phenomena of the threat to the 'establishment' is not limited to poor, developing states.85

The Right to Communicate Today

The polarization that occurred in the right to communicate transpired at the height of superpower influence in the developing world. At this time American foreign policy was finding many detractors in the
international community. UNESCO became a political forum and the important issue of the right to communicate was lost in the sensitivity of the international political arena of the time. It is interesting to note the state of this debate today. The effects of recent changes in Eastern Europe and the Soviet Union continue to be felt in the developing world. Without Soviet or Non-Aligned support, much of that development has been away from the collective approach, with its emphasis on the balanced flow, and towards the original free flow approach used for information and expression rights.

In 1991, the age of Integrated Systems of Digital Networks, the development of the right to communicate should be a concern. As the expansion of communication technology is encouraging democracy and compelling accountability by state actors, it cannot grow unchecked as states seek their own self-determination in the face of an increased and continual flow of western ideals and culture. The concerns of the early seventies are going to re-emerge with much more brutal force. To overcome the imbalance created by expanded communications technology and to preserve their culture in the face of this, states will become even more repressive. As a result, adherence to international law and human rights will fall dramatically behind the curtain of repression and fear.

At its inception, development of the right to communicate was simply an attempt to push international law and international relations to a greater level of democratization through the creation of international collective communication policies. Given the initial setbacks now may be the time to return to this simple conception particularly as the international superpowers are now less concerned about tyranny and more concerned with international peace and the destruction of economic and political barriers between states. In this favourable environment the international interdependence created by increased communication technology could facilitate a rekindled consideration of the right to communicate.

WHAT CAN BE DONE THROUGH UNESCO NOW

Even before the right to communicate re-emerges with the urgency that I suggest, there may be means of promoting the right to communicate in international law. Within the structure of UNESCO there are procedures for addressing violations of human rights. UNESCO acts within the enumerated areas of its purpose and is limited to matters that are not within the vires of domestic jurisdiction of the member state. UNESCO has jurisdiction over the right to hold opinions and to freedom of expression. These include freedom to seek, receive, and impart information and ideas of all kinds; the right to participate freely in the cultural life of the community; the right to freedom of thought, conscience, and religion; the right to freedom of association; and the right of members of minority groups to enjoy their own culture or to use their own language. In addition to these rights, the General Conference of UNESCO has also declared it will consider:
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massive, systematic or flagrant violations of human rights and fundamental freedoms; including, for example, those perpetrated as a result of policies of aggression, interference in the internal affairs of states, occupation of foreign territory, and implementation of a policy of colonialism, genocide, apartheid, racialism, or national and social oppression falling within UNESCO's fields of competence... 87

In the context of the right to communicate such procedural powers can be quite significant when UNESCO acts in the field of international human rights.

The UNESCO Communications Procedure which addresses violations of human rights starts with a communication from an individual or group, or possibly even a state, who is presumed to be a victim or to have a reliable knowledge of some violation by a state. It then proceeds to a committee for consideration. 88 If the committee determines that a violation has occurred, it has several options before reporting to the Executive Board. 89

When the Executive Board considers the recommendations it has the discretion to make the report public. Alone, this sanction could be enough to affect the behaviour of an offending state. However, because the committee recommendations and most often the Board reports are not made public, it is difficult to make any statement about the effectiveness of this body. 90

On its face the process seems more accessible than other complaint processes within the human rights system. For example, a complainant under the Human Rights Committee has to meet a more onerous standing requirement and a more stringent test for the exhaustion of domestic remedies. Moreover, the mere possibility of a hearing can have an impact on the violator even if the communication does not get past the admissibility point. This process also deals with a potentially broader scope of human rights abuses. These include censorship, harassment, and incarceration of journalists. It seems, however, that such a broad scope in fact reduces the effectiveness of this body because it obscures any clear definition of its mandate. As a result, the Committee's jurisdiction is often questioned or ignored thus further jeopardizing its legitimacy.

The second 'question process' is usually internally generated within UNESCO. While 'questions' are considered by the Executive Board and the General Conference in public meetings, the procedure for this process is not defined; it remains secretive and unclear. 91 Only resulting recommendations and general information about the evolution and consideration of the 'question process' are available. What is known, however, is that a decision taken by the Board is binding on the organization if not the state in question itself. 92

The variety of sanctions available through this process are greater than the potential sanctions from the Communications Procedure. For example, the simple publicity of a public consideration of the
issue can be a sanction. The Executive Board also has the mandate to call upon an offending state to take certain measures. Furthermore, the Director-General can use the ‘good office’ process to initiate direct consultations with the offending state. This has the advantage of promoting conditions of mutual respect and confidentiality through a consensual process for change. Indeed, the broad nature of the questions considered lend themselves well to a conciliatory result.

The difficulties with this approach are the problems involved with getting a question through the UNESCO administrative structure and to the Executive Board or General Conference. Generally, ‘questions’ focus on issues that lend themselves well to policy type infringements that facilitate general debate about macro or global infringements. A state engaged in extreme censorship may be a candidate for this process, but single cases are likely to have a nearly impossible time making their way through. The other difficulty with this approach is that it is established entirely under the authority of the Executive Board and, therefore, it is open to the Executive Board to change it at any time. This constraint is also likely to keep ‘questions’ restricted to a general nature, avoiding political embarrassment for other members.

The reference to national and social oppression in UNESCO’s declared area of competence constitutes a potentially significant addition to policy considerations. Given that the current director is not from one of the Non-Aligned States, it will be interesting to observe whether UNESCO begins to take a more active role in enforcing the right to communicate through these wide avenues of authority.

UNESCO could promote the right to communicate by establishing a special Rapporteur on Censorship through the Commission on Human Rights. Another possibility might be to create a special working group on communication repression and censorship operating through this same commission. A special Rapporteur would have authority to receive information on human rights violations within the area of concern and to take effective action to urge governments to resolve the problems. As a single person, the Rapporteur has the advantage of being less visible, less intrusive, diplomatically discreet, and more cost efficient. The Rapporteur would not suffer from the legitimacy problems inherent in the above communications procedures.

CONCLUSION

The preceding remarks, though not fully expanded, do suggest that there are indeed means available to pursue violations of human rights in the area of communications. As the history of the right to communicate demonstrates, few states take a sincere interest in its promotion: state self-interest is a dominant confounding influence upon the development of the right to communicate.

To say that all states should adhere to the liberal-democratic notion of individual based rights would be both paternalistic and arrogant. However, the role of communication in the paradigm of power must be accounted for in international law if human rights are ever going
to approach any level of *de facto* universal recognition, or if international
law is ever to approach law *per se*. Currently, although developing states
are on the weaker end of the power equation, they do possess the ability
to change this balance and affect the third dimension of power through
the development of the right to communicate.

Adherence to at least a few democratic principles will be neces-
sary in the international communication debate if for no other reason
than the fact that communication itself tends to be democratic and
moves society towards democracy. At the same time, history demon-
strates that no society has ever tolerated a completely open communi-
ca
tion process. Allowing for some collective interests to balance individual
interests is not socialist or authoritarian; it is simply good, well-balanced
policy.

If we are to avoid the impending human rights abuses that will
follow the current path of alienating much of the developing world from
the means of communication, we have to allow for and adhere to both
individual and collective manifestations of the right to communicate in
international law. This will require equal desire and effort from both
sides of the development debate.

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(2) Can. J. Pol. Sci. 335 at 338. See also H. Innis, *Empire and Communications*
(Toronto: University of Toronto Press, 1972) at 1. Norcia notes Innis radically broadened the
scope of political economy, redefining the contemporary thinking of what exactly constitutes
political economy and in so doing redefined power in fully social terms, reducible to no
single factor but communication was the heart of the interconnecting regimes constituting
Empire- the means of communication determined societies fundamental values and
organizational structures.

2. L. Sussman, *Power, the Press and the Technology of Freedom: the Coming of Age
Power.”

3. A. Smith, *The Geopolitics of Information: How Western Culture Dominates the


6. For a complete overview of the potential role of communication in socio-economic
development see UNESCO, *Report of the International Commission for the Study of
Communications Problems, Many Voices, One World* (UNESCO: Paris, 1984) at 14
[hereinafter *MacBride Report*].

7. Lehmann breaks this function into four general roles: communication as the
predominant source of political power and economic wealth; as a means of collecting,
storing, and processing information; as a common fund providing knowledge in order to
improve social cohesion; and as a means of improving relations between and within social
& Comp. L. 83 at 85. Yet, Lehmann goes on to argue that power is only one of several values
in the communication process and not the central value. He points out that people can only
have ideas about values if they are enlightened; so he argues that enlightenment, not
power is the core value of the global communication process. However, in the context of
Lukes’ concept of regime power Lehmann’s argument becomes circular. Indeed, with
Lukes’ notion of power, enlightenment is only possible if it arises within the conscience of
the society and is conceived as a potential issue on the socio-political agenda.

8. I will not venture into a discussion of the potential underlying theories of
international relations on which this argument proceeds and through which conclusions
are drawn and recommendations operate except to say that the paper proceeds on an assumption that the international system is essentially a modified Grotian relationship where regimes are an intimate component of the international system, but realist notions of state self-interest and non-state actors will confound any strict adherence to the classic Grotian model. In short, this paper accepts that there are "sets of implicit or explicit principles, norms, laws, and decision making procedures around which [state and non-state] actor's expectations converge in a given area of international relations" but these principles are confounded by an actor's ability, will and desire to act in its own interest when it is in its interest to do so: Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables" International Organization (1982) 36(2) 185 at 186.

9. The fact that it is not the most important issue suggests that the international social order is indeed structured, as Lukes suggests, on the third dimension of power. Lukes, supra, note 4 at 98.


13. Development gap is not used here in any objective scientific way. It is simply a subjective reference to the recognizable differences in the standards of living and quality of life between the "First" and "Third" worlds.

14. C. Ake notes that, "Man must eat before he can do anything else....The methodological implication of this...is that [one] must pay particular attention to the economic structure of society..." C. Ake, A Political Economy of Africa (London: Longman Press, 1981) at 1.

15. The increasing development gap compels states to adopt harsh policy options to manage increasing debt loads greatly restraining policy flexibility and independence. In the face of this developing states have called on the international community to give greater recognition to economic, social, and cultural rights. See generally, J. Donnelly, "Recent Trends in U. N. Human Rights Activity: Description and Polemic" (1981) 35 (4) International Organization at 633.


17. LeDuc, supra, note 12.


19. In this paper, I am not using any precise, objective definition of "Developing States." Generally, "Developing States" refers to the states traditionally thought of as the "Third World" states have included states of the so-called Non-Aligned Movement.

20. In this paper I adopt Berman's notion of law because it seems to fit the concept of international relations generally and human rights specifically: law must not be considered as "a body of rules, but as a process, an enterprise, in which rules have meaning only in the context of institutions and procedures, values and ways of thought." H. Berman, Law and Revolution: the Formation of the Western Legal Tradition (Cambridge, MA: Harvard University Press, 1983) at 11.

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23. When formulating and developing their NWICO proposal the Non-Aligned Movement noted, "it is an established fact that the activity of imperialism is not limited to political and economic domains but that it encompasses social and cultural areas as well, imposing thereby a foreign ideological domination on the peoples of the developing world." N. Aggarwalla, "News with Third World Perspectives: A Practical Suggestion," in P.C. Norton ed., The Third World and Press Freedom (New York: Praeger, 1978) at 24.


25. As an independent specialized agency of the United Nations it is legally based on a separate independent international agreement which sets out its mandate, functions, and structure. Article X of that agreement states the Organization shall be brought into relation with the United Nations Organization as one of the Specialized Agencies referred to in Article 57 of the Charter of the United Nations (as Signed 1945 and Amended 1965, 1968 and 1973) and be autonomous within the areas of its specialized jurisdiction. Constitution of the United Nations Educational, Scientific, and Cultural Organization, 1945 in International Law Governing Communications and Information: A Collection of Basic Documents, E.W. Ploman, ed. (London: International Institute of Communications, 1982) at 73.


27. Art. I, Section 1, Constitution of the United Nations Educational, Scientific, and Cultural Organization, 1945 (with amendments) in International Law, ibid., at 73.

28. Article 1, Section 2, Constitution of the United Nations Educational, Scientific, and Cultural Organization, 1945 (with amendments) in International Law, ibid., at 73.

29. UNESCO General Conference, Resolution 4/9.3/2, 1978 in International Law, ibid., at 173. For an expanded list of international legal instruments see the list of instruments in this same source.

30. They specifically noted the gap in information resources; the bias in the flow of communication and information from the North to the South coupled with the economic, political, and cultural fragility of the South; the increasing interdependence of states, the exponential advances in communication technology and the threat of further socio-economic dependence; and underdevelopment in these nation states: B. Pavlic and C. Hamelink, "The New International Economic Order: Links between Economics and Communications" Reports and Papers on Mass Communication No. 98 (Paris: UNESCO Press, 1985) at 13.


36. This pool ultimately failed because the Non-Aligned countries were not committed financially to its support. In fact, the expectation was that it would be supported by Western states: T. Wolfe, "A New International Information Order: The Developing World and the Free Flow of Information Controversy," (1980) 8(1) Syracuse J. Int'l L. & Com. 249 at 293.

37. Wolfe, ibid., at 260.


development, the common heritage, environment, humanitarian assistance, and peace, at 442.

42. K. Vasek excerpted in S.P. Marks, ibid., at 441.


44. Supra, note 24 at Article 19.


46. Ibid.

47. MacBride Report, supra, note 6 at 173.


51. Marks, supra, note 41 at 451.

52. Lehmann, supra, note 7 at 85.


54. Article 9 adopted June 27, 1981, 21 I.L.M. 58, OAU Doc. CAB/LEG/67/3 rev. 5, (1982), entered into force Oct. 21, 1986. The irony of this is that communication and information flow is so controlled and repressed in most of black Africa and the information that does move freely is not for the benefit of indigenous Africans so most do not even know that such a Charter right exists.


57. Indeed, perhaps more basic then the right to life itself; if we are not permitted to communicate our existence no one can know we exist or if we cease to exist.

58. Institutiones Justiniani, Lib. I Tit. I, 4 cited by Fisher, “A Status Report”, supra, note 44 at 18. The legal branch refers to a right in law that simply confers a power: a legal power created by the state, part of the social contract. As such, the state is entitled to develop, withhold, or concede that power. The moral branch refers to a right as a fundamental entitlement, a condition that attaches to an individual necessary for the development and maintenance of life; in such a case no state or super-state actor is entitled to deny it. The moral branch is accompanied with a legal obligation to ensure that the opportunity to realize such a right exists in the nation state. Aldo Cocca uses a similar division of responsibility, but uses the terms “a freedom” versus “a right” in “The Domain of the Right to Communicate,” in Fisher and Harms eds., The Right To Communicate, supra at 25.


60. Lehrman, supra, at 87.


63. Iuri Kolossov, Fisher, supra note 44, at 37.

64. Fisher, ibid., at 37.


Anawalt, supra, note 60 at 222.

The developmental journalist came from Tanzania as a product of the Ujamma movement in the early 1970’s. This project called for massive state mobilization, communal farming, and civilian support. In the initial euphoria of this plan journalists were only too willing to assist the state toward development by avoiding negative reporting. Within a few years, however, this policy had to be enforced through state censorship and direct force. States elsewhere in Africa, Asia, and South and Central America have since also adopted similar journalistic policies.

Anawalt, supra, note 60 at 234.

Ibid.

Redmond, supra, note 57 at 59.


This approach is no longer limited to Western states. With the tremendous changes happening in Eastern Europe most of these rights are now established in many former Soviet Bloc states as well.

Declaration of Rights of Man and of the Citizen in International Law, supra, note 25 at 126.


Lehmann, supra, note 7 at 83.

Anawalt, supra, note 60 at 220.


Anawalt, ibid., at 220.

Chomsky, considering western democratic institutions and communications policy, concludes:

The prospects for a democratic communications policy are inevitably constrained by the distribution of effective power to determine the course and functioning of major social institutions. Hence the goal can be approached only as an integral part of the further democratization of the social order. This process, in turn, requires a democratic communications policy as a central component...Such a concept of democracy...is remote from those that dominate public discourse - hardly a surprise, given its threat to established privilege.


Supra, note 2.


Anonymous communications are not accepted. Before the communication goes to the Committee the Director-General determines the admissibility of the complaint. Once found admissible the communication goes to the committee with notice to the
offending state that violation is now under consideration by the committee. Alston, *ibid.*, at 677. Alston delineates the full process of admissibility at 678 - 680.

89. The committee could consider a "Good Offices" mission to gather more information. A more likely first option is the request by the committee for more information from the complainant, the offending government, or attempt to gather information within the UN’s network of groups and committees or from independent sources operating in the state or who have knowledge of the state: Alston, *ibid.*, at 680.

90. Alston, *ibid.*, at 681.

91. Alston, *ibid.*, at 689.

92. Alston, *ibid.*, at 693.