

## A New Beginning

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### **Abstract:**

The author reviews the contributions of Jean d'Arcy to the development of the right to communicate, noting that the distinctive mark of the d'Arcy work was that it was based 'not on legislative but on ethical and sociological principles.' The several Unesco initiatives are chronicled, including the work of the MacBride Commission that 'put two-way communication at the centre of the new right.' He suggests several next steps including a new series of meetings to debate carefully key issues of the right including the emphasis on interaction and the means for guaranteeing this right. Finally, he raises the question of legitimate limitations that might be placed on the exercise of the right.

When Jean d'Arcy announced in 1969 that 'the time will come when the Universal Declaration of Human Rights (UDHR) will have to encompass a more extensive right than man's right to information... This is the right of man to communicate',<sup>1</sup> he was launching an idea ahead of its time. He realised that the right to information enshrined in Article 19 of the 1948 Universal Declaration of Human Rights was not sufficient in itself to guarantee to human beings the freedom to communicate with each other in ways that their very human nature required.

It may seem that the difference between the right enshrined in the UDHR and the new right adumbrated by d'Arcy is so thin as to be non-existent. Article 19 of the Declaration stated firmly that '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.' What more, the critic might ask, is required?

d'Arcy's answer was best expressed in the very last piece he wrote, a preface he contributed to a book<sup>2</sup> published in 1983, a few days before his death and 14 years after he first unveiled his idea. In it, he stated that most analyses of the modern communications revolution have been superficial, evaluating it only in terms of the past and in terms of quantitative, not qualitative, change. He wanted the modern mass media mentality of 'a unilateral, vertical flow of non-diversified information', which was not real communication, to be replaced by an interactive form of communication, based on an ethical approach which would re-establish real communication among human beings. He saw the right to communicate as the apex of an ascending progression of liberties - freedom of opinion, freedom of expression, freedom of the press and freedom to communicate. For him the proposed new right was a means of creating a new world order of communication, not as substituting for existing freedoms but 'rather (as a way) to crown the whole fabric of "intellectual" freedoms with a new one that encompasses all the others.'

The distinctive mark of d'Arcy's analysis is that it is based not on legislative prescriptions but on ethical and sociological principles. He deplored the tendency to equate communication with mass media. For him, the right to communicate was a means to an ethical objective, the creation of conditions in which individuals would be enabled to develop their potential and generate the communities in which their human spirit could flourish. As he put it: '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 phenomenon of communication... Today, it is clear to us that it (the right to communicate) encompasses all these freedoms but adds to them, both for individuals and societies, the concepts of access, participation, and two-way information flow, all of which are vital, as we now sense, for the harmonious development of man and mankind.'<sup>3</sup>

The first steps to promote the idea of a right to communicate were taken in 1973 by some members of the International Institute of Communications.<sup>4</sup> The main aim of their discussions was to reach agreement on a definition of the right with the intention of proposing its incorporation into the Universal Declaration of Human Rights or adopted by the UN as a separate Definition. As this work developed and references to it appeared in the Institute's magazine, the idea stimulated interest among a wider circle of academics, lawyers, communicators and government officials in many countries.

At an early stage of the discussions, a difference of opinion emerged on a fundamental aspect of the right to communicate. Most the experts from Western countries saw the locus of the right as inhering in the individual human being, though some had reservations about codifying the right in national and international law. For them, human rights reside in the individual human being; otherwise, they are not *human*.

The experts from the Communist countries, however, were firmly opposed to the idea that individual beings could have rights that were not subject to state control. Proponents of this view argued that while the right to communicate is a human right, it is at the same time 'a social phenomenon strongly shaped and defined by the socio-economic conditions, ideological assumptions and cultural values of a given country'<sup>5</sup> and that 'communication between natural and juridical persons, i.e. persons, organizations, institutions of mass communication or groups within a given society, lies in the competence of a given state.'<sup>6</sup>

## Unesco initiatives

The differences between these ideological positions were exacerbated when the debate was transferred to the international stage. Unesco had already been set up an international commission<sup>7</sup> to study the totality of communication problems in modern society. In 1974, at its 18th General Conference, the organisation recommended that member states include a study of the right to communicate in their deliberations. A few years later the Unesco Division of Free Flow of Information and Communication Policies took over from the IIC the organisation, administration and financing of 'meetings of experts' for this purpose.

Unfortunately, at this critical period, the East-West Cold War was at its iciest and the debate on the right to communicate became enmeshed in conflicting ideas about issues such as free flow of information and the establishment of 'a new world information order', as it was known.

Governments on both sides of the ideological divide had their own reasons for extending or limiting communications rights and for keeping tight reins on the communications freedoms they permitted. The right to communicate was a new and untested idea and either feared that it would give the other side unacceptable advantages in the ideological battle they were waging. In this climate, the experts involved in the right to communicate debate inevitably reflected the opposing interpretations of the right taken by their authorities

Nevertheless, the Unesco involvement with the meetings of experts advanced the study significantly and considerable progress was made on drawing up a definition of the right to communicate and on determining its elements. Several meetings were held under Unesco auspices and copies of papers presented by the experts attending these meetings are to be found on the Right to Communicate website.<sup>8</sup>

In 1978, Mr. Seán MacBride of Ireland, who had been appointed chairman of the international commission, met some members of the group of experts for a briefing on the right to communicate and the Commission's final report, *Many Voices, One World*, issued in 1980, took a positive line on the issue. Significantly, it stressed the importance of advancing beyond existing communication rights and put two-way communication at the centre of a new right. It declared:

Communication, nowadays, is a matter of human rights. But it is increasingly interpreted as the right to communicate, going beyond the right to receive communication or be to be given information. Communication is thus seen as a two-way process, in which the partners - individual and collective - carry on a democratic and balanced dialogue. The idea of dialogue, in contrast to monologue, is at the heart of much contemporary thinking, which is leading towards a process of developing a new area of social rights.<sup>9</sup>

This was seen by many of those who had been working on the right to communicate as an endorsement of the main thrust of the d'Arcy approach. Indeed, a majority of the Commission members had wished to go much further but the ideological differences within Unesco, which were of course replicated in the Commission, forced it to produce a more careful compromise<sup>5</sup>. The Soviet member of the Commission, Mr. S. Losev, refused to accept the existence of the right to communicate and said it should not be discussed 'at such length and in such a way in our report.'<sup>10</sup>

The Commission summed up its views in a carefully balanced way:

The concept of the 'right to communicate' has yet to receive its final form and its full content. Far from being, as some apparently maintain, an already well-established principle from which logical consequences might, here and now, be drawn, it is still at the stage of being thought through in all its implications and gradually enriched. Once its potential applications have been explored, both in Unesco and in the numerous non-governmental organizations concerned, the international community will have to decide what intrinsic value such a concept possesses. It will be required to recognize - or not - the existence of a possible new human right, one to be added to, not substituted for, those that have already been declared... We suggest that this approach promises to advance the democratisation of communication on all levels - international, national, local, individual.<sup>11</sup>

In a better international climate, the fact that the debate on the right to communicate had reached such prominence as to be discussed at two General Conferences of Unesco and to receive such sympathetic appraisal would have been an encouragement to those involved to continue their work. However, the difficulty in reconciling the opposing views proved a major blockage to the further research and discussion on the idea d'Arcy had promoted.

A charitable view would be that Unesco's Division of Free Flow of Information and Communications Policies had limited funds for organising the meetings of experts and wanted to bring the work to a speedy conclusion. A more realistic explanation is that Unesco itself was paralysed by the ideological divide on the question of what was called A New International Communication Order (NWICO) and this determined the conflicting attitudes to the right of communicate. Under its Senegalese Director-General, Amadou-Mahtar M'Bow, the organisation had been adopting what was regarded in the West as a socialist dialectic on communications issues and a majority of its members saw in the right to communicate issue an opportunity to oppose the spread of western media organisations into Third World countries.

Not surprisingly, this antagonised some Western countries, notably the US and the UK, where powerful media interests saw the right to communicate being used as a ploy to frustrate their expansionary ambitions. This opposition, coupled with their antagonism to the direction the debate on the NWICO was taking, led to the withdrawal of both the US and the UK from Unesco.<sup>12</sup> The consequent drying up of Unesco interest in the debate ended the organization's financial support for the right to communicate concept and the meetings of the group of experts. Finally, the death of Jean d'Arcy in 1983 led to the abandonment of the topic as a subject of debate at IIC meetings and to the dispersal of the group of experts. The right to communicate debate became a victim of Cold War politics.

## **The next steps**

Whether the international climate for the right to communicate is any more congenial now than it was some 20 years ago when the earlier efforts were frustrated remains to be seen. The collapse of the Communist system has probably removed some of the major obstacles that blocked progress in the past. The spread of democracy, shaky as it may be, should help to dispel the suspicion that former socialist countries had about the individual's right to communicate.

The attitude of the major western countries is harder to predict. The major media empires will still seek to use the right to communicate to justify their further expansion into countries that want to protect their own cultures. At the same time, some western countries will oppose the right for fear it will be used as a weapon in the struggle to produce a fairer division of the world's communication resources.

One encouraging development is the developing emphasis on human rights. The work of Mrs. Mary Robinson, recently retired as UN High Commissioner for Human Rights, in insisting that recognition of the human rights of the individuals concerned can provide the answer to many international quarrels, has brought a new dimension into the solving of international quarrels. Though her stance provoked the antagonism of some nations, notably the US which blocked her reappointment, it won the approval of many countries and it has developed a momentum that

hopefully will affect future international relations. Its relevance to the debate on the right to communicate is obvious.

The interest and research activity generated by the new website will hopefully lead to the reconvening of a group of experts to carry on the work. Many of the old group have made it known that they are eager to resume their efforts and have already committed themselves to contributing articles to the new website or other outlets. A lot can be achieved in this way. However, a major handicap is likely to be the difficulty in obtaining a sponsor to finance the research and the meetings that will eventually be necessary if the work is to be progressed to a successful conclusion. An early attempt should be made to attract support from a foundation with an interest in communication freedoms to encourage and finance future research on the right to communicate.

Progress would be achieved if lessons were learned from the mistakes of the past. While the meetings were being arranged by the IIC, the experts could pursue several lines of approach simultaneously and ideological differences could be kept in the background. Once Unesco had taken over the financing and running of their meetings, it set the agenda and steered the group of experts into a precipitate attempt to define the right to communicate, with the inevitable result of stirring up the ideological argument. It was a classic example of putting the cart before the horse.

In the new attempts to revive the research on the right to communicate, this experience should be taken into account. The lesson surely is that it would be inadvisable to have control of the debate completely in the control of an organisation in which, even in the present less fraught international climate, ideological considerations would still play a significant, even a preponderant, part in deciding the shape and direction of the discussions.

## **The Approach**

Certainly, Unesco's co-operation would be essential and - that of the UN Division of Human rights could be influential - in having the right to communicate accepted by the UN and enshrined in the UDHR or in a separate Definition, as those involved in the discussions envisage. But, as far as possible, the issue must first be approached from a philosophical and ethical perspective and the discussions allowed to progress freely before political and ideological influences are allowed to sidetrack it.

Meanwhile, it may be useful to outline the areas in which such research would be fruitful. As mentioned above, a basic issue in the debate on the right to communicate is why is it needed when the 'right to freedom of opinion and expression' is enshrined in the UDHR. The important difference between the two approaches is that the UDHR formulation lacks the emphasis on the two-way process of communication that the right to communicate signifies. The right to communicate is the key to guaranteeing a genuine exchange of ideas and opinions between individuals that is the entitlement of each human person. In the constitutions of many countries the UDHR right is interpreted as a 'right to freedom of information', a formulation which entitles the individual to obtain information but not to impart it. Such a top-down process is not sufficient. Communication is not communication unless it is a two-way process that enables the individual to pass information and ideas up the ladder as well as being the recipient at the bottom.

Several writers who participated in the earlier research on the right to communicate have addressed this issue and their views can be accessed in the various books, papers and essays listed in the right to communicate website. In a previous paper, I have proposed 'a hierarchy of rights, freedoms, responsibilities and entitlements, starting with the basic right to communicate and being developed into a set of freedoms, entitlements and obligations, devolving on society in different ways, to enable the right to communicate to be fully exercised and expanded.'<sup>13</sup>

In this context, future researchers will be faced with the task of debating whether or not a new right to communicate is necessary and, if so, how the right should be described. From early on in the earlier discussions, there seemed to be general agreement that such a right was necessary and that it should be called 'the right to communicate' and not 'the right to communication'. The distinction was considered as critical as the latter description would imply no greater freedom of communication than that already enshrined in the UDHR. The significance of this was pointedly demonstrated by Aldo Armando Cocca, one of the main contributors to the meetings of experts, when he illustrated the precision of the Romance languages in this context.<sup>14</sup> He cited the Spanish usage of 'el derecho a comunicarse' rather than 'el derecho a la comunicación' to illustrate how the former description accurately reflects the nature of the right to communicate as an active rather than a passive function, specifically locating the right in the individual rather than considering it as a freedom conferred by an anonymous superior entity.

There are, of course, arguments other than philosophical or political ones that can be made against the concept of the right to communicate. Of these, the most pragmatic concerns the practicality of declaring the right to communicate as the right of the individual. How, it might be argued, can all individuals on earth claim an entitlement to make their views known publicly? No communication system known could provide the capacity for such a volume of traffic. The right to communicate, therefore, could not, the argument might go, be put on the same level as the right to life or the right to the practice of one's religion.

This is a fair point. Two answers can be put forward against it. The first is that the existence of the right does not necessarily mean that the individual possessing the right must exercise it. The UDHR proclaims the individual's right to freedom of movement, to marry, to own property, to work, to be educated, to join a trade union, none of which the individual is compelled to exercise. Similarly, the right to communicate can be guaranteed to the individual even if the individual has no wish to exercise it.

The other answer to the objection that it not practicable to extend the right to communicate to the individual is that the exercise of it does not require that each person be given all the facilities of press, radio and TV and access to the national parliament to exercise the right. It is sufficient that the individual's right to speak in public is guaranteed by the national constitution and he or she is not prevented from disseminating ideas in the print or broadcast media unless this would be in breach of just and fair limitations placed on the exercise of the right. The relative scarcity of modern media should not be used as a reason for blocking the definition of the right.

Neither could the availability of the Internet be used as a claim that this meets the demand for a right to communicate. The ownership of computers and modems is confined largely to people in the developed nations. It is no use asserting that individuals in poor parts of Africa have the opportunity to exercise their right to communicate via the Internet if they have not sufficient resources to feed themselves.

Even in the case of the Internet, there can be no doubt that the events of September 11, 2001, have encouraged national authorities to seek to outlaw encryption programs and to give themselves the right to intercept and censor email communication. Some nations, too, have operated intermittent bans on email traffic or Internet access outside the country, making communication between individuals either impossible or dangerous.

It is not just at a national level that attempts are being made to censor, control or limit access to communications. The constant expansion of global media empires is stifling national, regional and local media organisations, whether publicly or privately owned. The more these means of communication are taken over by the media moguls, the more communication between communities and individuals is stifled. These media overlords act as gatekeepers, letting in only what they want to and preventing anything coming out except what they approve. There is a growing need to control the expansion of the global media organisations in the interests of the individual's and of the community's communication rights.

The other main argument that can be made against the right to communicate is that there is, of course, a need for limiting the right of the individual to communicate in certain circumstances. The old way of expressing this is that no one is entitled to shout out 'Fire, fire' in a crowded cinema when there is no fire at all. Even in those countries that have liberal communication freedoms, the law lays down certain limits on the right to communicate. Usually, the limitation is based on concern for the common good or, as expressed in the 1937 Irish Constitution, the right to freedom of expression 'shall not be used to undermine public order or morality or the authority of the State.'<sup>15</sup> At the same time, the right must be defined, or limited, in such a way that it does not give *carte blanche* to the global media empires that are progressively monopolising all the means of communication.

In reaching international agreement on the right to communicate, these two practical difficulties - the limits on communication resources and the need to set limits on the exercise of the right - have not received a great deal of consideration in the research to date on the issue. This is, perhaps, because the researchers were more concerned with trying to reach a definition of the right and with the argument over its locus. It is likely that, as the debate gets closer to decisions on these matters, the practical difficulties involved will be raised by governments and by the owners of the media outlets.

However, it may be years before this stage in the discussions is reached. It seems obvious that the question of the locus of the right to communicate will continue to divide international opinion. To my mind, this is the most critical question to be answered in the debate. The answer to it will determine most of the other aspects of the issue. If it is decided that the right resides in the state, then the introduction of a new right to communicate will be unnecessary since it would not provide any greater freedom than is already provided in the UDHR. If it agreed that the right to communicate resides in the individual and in the communities that individuals make up, then many other questions - the freedoms which the right entails, the provision of means for its exercise, the limitations that can legitimately be put on its exercise - can be determined. There is much work still to be done before Jean d'Arcy's vision is achieved.

## NOTES

1 Jean d'Arcy 'Direct Broadcast Satellites and the Right to Communicate, *EBU Review*, 118 (1969), pp. 14-18

2 See Preface to *The Right to Communicate: A New Human Right*, ed. D. Fisher and L.S.Harms, Boole Press, Dublin (1983)

3 See Jean d'Arcy, *The Right to Communicate*, CIC (International Commission for the Study of Communication Problems, known as the 'MacBride Commission'), Document No. 36, page 3

4 At this time, the IIC was called the International Broadcasting Institution

5 See Jadwiga Pastecka, 'A Socialist Approach', *The Right to Communicate: A New Human Right*, page 88.

6 See Wolfgang Kleinwachter, 'Internal and International Aspects', *ibid.* page 102.

7 The Unesco International Commission for the Study of Communication Problems was set up in 1973 to study the totality of communication problems in modern society.

8 For a useful summary of these meetings, see Tomo Martelanc, 'Wanted: A New Impetus', *The Right to Communicate: A New Human Right*.

9 See *Many Voices, One World*, Final Report of the MacBride Commission, Unesco: Paris (1980), page 172

10 See Tomo Martelanc, 'Wanted: A New Impetus' in *The Right to Communicate: A New Human Right*, page 39.

11 See *Many Voices, One World*, page 173.

12 In October 2002, President Bush indicated that the US would rejoin UNESCO soon. The UK returned in 1997.

13 See Desmond Fisher in 'The Right to Communicate: A Philosophical Framework for the Debate', *Evolving Perspective on the Right to Communicate*, ed. L.S.Harms and Jim Richstad, East-West Center, Hawaii, 1977.

14 See Aldo Armando Cocca, *El Derecho a Comunicarse/Right to Communicate*, Consejo de Estudios Internacionales Avanzados, Buenos Aires, 1983, page 114.