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"WAVES IN THE COMMUNICATION FLOW"

The Interplay of Constitution, Legislative, and Governmental Institutions in Mass Media International Case Studies in Institutionalized Communication Control Regarding Mass Media

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ABSTRACT

This article compares in case studies in the constitution, written laws, and other national institutions the influence of the state regarding the production and function of mass communication and related values in different countries. Our interest is to demonstrate the differences between countries under the aspects of national constitution and governmental institutions that provide or not provide guidelines in terms of the use and protection of communication national organizations that provide additional guidelines international organizations for the use of mass communication media in a country. The interplay of national constitution, legislative, and governmental institutions is the framework for the existence of national mass communication. Under the title "Waves in The Communication Flow"we will face the framework of exterior institutions of different national states regarding their influence on mass communication. As mass communication we can define all institutions producing information for a wide audience delivered in mass media. As a process we can define mass communication as a 'flow of any information' delivered by mass media. This flow can be promoted or prohibited by the framework of institutions named above. This article examines the extent and nature of the use of laws and constitutional systems with an interest in the methodology of comparative studies in constitutional law.

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INTRODUCTION

We can see in several cases that if the 'freedom of speech' is not covered by the national constitution, state corporations or the legilative execution is the responsable institution. This practice is applied by England, a case with no constitution, Australia, and Iran, where the freedom of expression is guaranteed, but de facto waved to the legal decision making bodies, what means Islamic law. 'Freedom of speech or expression' is a relatively new aspect of communication history coined by anglophone Western countries. We will therefore present also alternative forms used instead of 'freedom of speech'. In any case we have here an interplay between of four elements:

1. Gouvernment and the legislative institutions	Controlling Instances
2. Institutions serving national mass communication needs	Controlling Instances
3. State of Privatly owned institutions offering mass media services	Producing Industry To the audience
4. The audience	Consumers

PARTIES IN THE MASS MEDIA COMMUNICATION PROCESS

Main media of information in the 21th century focus on literate and non-literate skills, e.g. in e-mail, telephony, and video conferencing allow high levels of transnational interaction between people without applied literacy. Also main media in mass communication focus on non-literate qualities:

Cinema, Video,
Journals, Magazines, Electronic Publications, Newspapers,
Radio
Telecommunication
Television
Internet

Main Media of Information of the 21st Century

According to the *Worldwide Press Freedom Index 2006* of *Reporters Without Borders* Northern European countries are on top of the Index, with no recorded

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censorship, threats, intimidation or physical reprisals, other contries of the EU are in the upper middle field.(**2**)

27	United Kingdom	6,50
35	Australia	9,00
43	Taiwan	10,50
53	The United States	13,00
122	Thailand	33,50
162	Iran	90,88

WORLDWIDE PRESS FREEDOM INDEX 2006 OF REPORTERS WITHOUT BORDERS

All of the media mentioned above we can call the mass media industry. We will focus in our case study on the constitution and the body of governmental and quasi-governmental institutions that can influence the flow of information of these mas media. In most of the cases we will discuss the national consitution guarantees freedom of expression for its citizens. This freedom is modified by the actual law and the censoring institutions that control mass media outlets according to applied law. The analysis focused upon particular niches in which these models for rights address asymmetries of power that can affect the flow of information in mass media. It includes analyses of national intitutions regarding mass media right and laws and an overview over international non-governmental institutions dealing with mass media communication issues.

HISTORY OF FREEDOM OF SPEECH

Freedom of speech or, to avoid a pharse coined in the U.S., other similar rights allow to express opinion in any media. In order to make sure that this freedom does not interfere with other freedoms and the freedoms of others, it can be restricted in a specific case. This is the point where laws and institutions start to judge regarding the qualities of mass media products. When freedom of speech is

[2] Worldwide Press Freedom Index 2006. Reporters without Borders. [2.2.2007] <Http://www.rsf.org/rubrique.php3?id_rubrique=639>

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available a government cannot make it impossible to express an opinion. But it has by law and control institutions the option to punish for things people have said, written or published, when not in accordance with laws or constitution. Prior to this any prohibition would be censorship.(**3**)We must consider the term 'free speech' as a development of a recent debate concerning democracy in the Western world. We can classify it as a typical genre developed upon the thinking of the Western society, namely the U.S. American society. Other countries developed similar methods to ensure right for free speech.(**4**)The topic of 'free speech' is one of the most contentious issues in a liberal society. The right to freedom of speech is guaranteed under international law through numerous human rights instruments, notably under Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights, although implementation remains lacking in many countries. The synonymous term 'freedom of expression' is sometimes preferred, since the right is not confined to verbal speech but is understood to protect any act of seeking, receiving and imparting information or ideas, regardless of the medium used.

Recent discussions we can face under the aspect of the opposite positions between cultures with liberal conceptions of democracy and free speech and societies with a low level of free speech interest. When tracing back the history of free speech, we find it connected with the idea of democracy, even though democracy is not a common term with equal meanings in past and present end among different democratic systems. Stanley Fish said in the interview There is no such thing as free speech:

> Many discussions of free speech, especially by those whom I would call free speech ideologues, begin by assuming as normative the situation in which speech is offered for its own sake, just for the sake of expression.

[3] Wasserman, Howard M. "If You Build It, They Will Speak. Public Stadiums, Public Forums, and Free Speech". In: NINE. A Journal of Baseball History and Culture. Volume 14, Number 2, Spring 2006. Pp. 15-26.
Craig, Nico Nolte. "Privacy and Free Speech in Germany and Canada. Lessons for an English privacy tort". In: European Human Rights Law Review. 1998. 2, Pp. 162-180
[4] Coliver, Sandra. "Commentary to: The Johannesburg Principles on National Security, Freedom of Expression and Access to Information". In: Human Rights Quarterly. Volume 20, Number 1, February 1998. Pp. 12-80.

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> [...]
> The condition of speech being free is not only unrealizable, it is also undesirable. It would be a condition in which speech was offered for no reason whatsoever. Once speech is offered for a reason it is necessarily, if only silently, negating all of the other reasons for which one might have spoken. Therefore the only condition in which free speech would be realizable is if the speech didn't mean anything. Free speech is speech that doesn't mean anything (**5**).

Kenneth A. Strike in Liberal Discourse and Ethical Pluralism. An Educational Agenda gives a definition of liberalism as ethical discourse:

> The account of liberal speech I shall sketch views liberalism as a language developed in history to talk about civic affairs *(***6***)*.

Colin Farrelly in *An Introduction to Contemporary Political Theory* wrote regarding deliberative democracy:

> To fully participate in the decision-making process, argue deliberative democrats, one must participate in authentic deliberation and not simply express one's preferences. Such deliberation requires that parties abandon the strategic behaviour characteristic of the aggregative model of democracy and strive instead to reach a consensus among free and equal participates. To participate in this discursive practice is very different from participating in the decision-making process of the aggregative model of democracy. Deliberative democrats characterize participation in the democratic process as a transformative process *(***7***)*.

1. 'FREEDOM OF SPEECH'– HISTORY OF THE USA

In 1789 *The Declaration of the Rights of Man* of the French Revolution provided freedom of speech. In 1791 *The First Amendment of the US Bill of Rights* guaranteed freedoms of religion, speech, the press and the right to assemble. In the 20th century 'democratic' became the meaning of a political system set up so that

[5] "There is no such thing as free speech": An interview with Stanley Fish. Stanley Fish discusses his book. Latrobe University. Australian Humanities Review. [2.2.2007]
<Http://www.lib.latrobe.edu.au/AHR/archive/Issue-February-1998/fish.html>
[6] Strike, Kenneth A. Liberal Discourse and Ethical Pluralism. An Educational Agenda. University of Illinois at Urbana_Champaign. [2.2.2007]
<Http://www.ed.uiuc.edu/EPS/PES-Yearbook/92_docs/Strike.htm>
[7] Farrelly, Colin. An Introduction to Contemporary Political Theory. Sage Publications. 2004 Chapter Seven Deliberative Democracy. [2.2.2007]
<Http://politicalscience.uwaterloo.ca/Farrelly/chapter7oftextbook.pdf >

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people can participate with their own views, without being punished for expressing them. The *United States Constitution* protecting rights and liberties was adopted in 1788. The *Supreme Court* requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. The *Supreme Court* has also recognized that the government may prohibit some speech that may cause a breach of the peace or cause violence. The right to free speech includes media of expression that communicates a message.

In the U.S. freedom of speech is guaranteed by the *First Amendment*, which states that the Congress shall make no law abridging the freedom of speech including the press. Freedom of speech is the concept of being able to speak freely without censorship. It is often regarded as an integral concept in modern liberal democracies (**8**). In 2001 in the wake of 9/11, the *Patriot Act* gave the U.S. government power to investigate individuals suspected of being a threat, raising fears for civil liberties (**9**). "Liberty Rhetoric" was a tradition of speaking about the relationship between the state and the citizen in the U.S. Rhetoric in an open and democratic society with rights of free speech, free assembly keeps its terminology until recent times in related writings.

In the U.S. the *Federal Communications Commission* (*FCC*) receives complaints that television and/or radio networks, stations or their employees or guests have broadcast extreme, incorrect, or improper political, economic or social statements. Often consumers complain that certain broadcast statements may endanger the U.S. or its people, or threaten the government, the economic system, or established institutions like family or marriage saying these attacks are 'un-American' and an abuse of freedom of speech. The *FCC* also receives complaints that some broadcast statements criticize, ridicule, 'stereotype' or demean individuals or groups because of the religion, race, nationality, gender or other characteristics of

[8] Siegel, Stephen A. "The First Amendment's New Standard History". In: Reviews in American History. Volume 26, Number 4, December 1998. Pp. 743-750.
[9] Cf. Craig, Carys J. "Putting the Community in Communication: Dissolving the Conflict Between Freedom of Expression and Copyright". In: University of Toronto Law Journal. Volume 56, Number 1, Winter 2006. Pp. 75-114.
Pinchevski, Amit. "Freedom from Speech (or the Silent Demand)". In: Diacritics. Volume 31, Number 2. Summer 2001. Pp. 71-84.

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the group or individual. The *FCC*'s responsibility is to protect communication rights. The *FCC* is barred by law from trying to prevent the broadcast of any point of view. The *Communications Act* prohibits the *FCC* from censoring broadcast material, and from making any regulation that would interfere with freedom of speech. The *FCC* cannot suppress such expressions. According to *FCC* opinion on this subject 'the public interest is best served by permitting free expression of views'. This principle ensures that the most diverse and opposing opinions will be expressed, even though some may be highly offensive. The commission does have enforcement responsibilities in certain limited instances.

In the U.S. radio and television communication is controlled by the *Federal Communications Commission.* The international phases of transport and communications are under the direction of the *Office of Transport and Communications of the Department of State.* The *United Nations* maintains an *International Telecommunication Union* (*ITU*), which has the three functions to maintain and extend international cooperation for the improvement and rational use of telecommunication, to promote the development and efficient use of technical facilities, and to harmonize the actions of nations. Telecommunication has been established by international companies. The *International Communication and Information Policy* (*CIP*) group is part of the *Bureau of Economic and Business Affairs* at the *U.S. Department of State*. *CIP* leads the *Executive Branch* policy-development process for international communications and information issues, and serves as America's advocate around the world for policies that:

- Expand access by all people to information and communication technologies (ICT)
- Improve efficiency and security in the worldwide ICT and telecommunications market, particularly relying on free-market forces
- Ensure fair opportunities for U.S. companies to participate in this important sector around the globe (**10**)

Communication related organisations are the *National Communication Association*, the *Spiritual Communication Commission*, and the *World*

[10] International Communication and Information Policy (CIP). U.S. Department of State. [1.9.2006] <Http://www.state.gov/e/eb/cip/>

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Communication Association. The *American Communication Association* (ACA) was founded and incorporated in 1993 (**11**). In the United States many university journalism departments evolved into schools or colleges of mass communication or 'journalism and mass communication'. The U.S. *Association for Education in Journalism and Mass Communication* (AEJMC) is the major membership organization for academics in the field, offering regional and national conferences and refereed publications.

2. COUNTRIES WITH ALTERNATIVE CONCEPTS FOR 'FREEDOM OF SPEECH'

The emergence of *Information and Communication Technology* (ICT) in Asia has become evident in the last decades of the 20th century. *OECD* stated that China is the biggest exporter of information technology goods in 2004, surpassing the U.S. and *EU*. In the *Opening Address on the 3rd Asian Law Institute Conference* Cao Jianming stated that the foundation of the *Asian Law Institute* is a reflection of the common wish to strengthen legal communication and cooperation among Asian countries offering a favorable platform for them to make joint efforts to promote the development of legal education and research in this area.(**12)**

ASIAN CASES OF NATIONAL FRANWORK FOR MASS COMMUNICATION: TAIWAN AND THAILAND

The telecommunications and media services industry is defined in Taiwan (Republic of China) by its government as 'any service that uses networking technology to transmit or receive text, images, voice, data or other signal information', broadly 'covers telecommunications services, and broadcast services'. According to Taiwan's government the development of the telecommunications and media services industry in Taiwan not only raises the 'quality of communications', it is 'key to developing' e-commerce, digital content, device innovation, new network services

[11] Website <Http://www.americancomm.org/>
[12] Opening Address on the 3rd Asian Law Institute Conference by Cao Jianming. Grand Justice of the First Rank and Vice President of the Supreme People's Court of the People's Republic of China (May 25th, 2006). National University Sıngapore. [2.2.2007]
<Http://law.nus.edu.sg/asli/news/news13062006_2.htm>
See also: Publications related to freedom of communication in Asia. ARTICLE 19 Organisation. [2.2.2007]
<Http://www.article19.org/publications/regions/asia/index.html>

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and other related industries (**13**) Censorship in the Taiwan was offically eliminated in 1977. Section 39 of the constitution states that:

> A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means.
> The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.
> The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made.
> The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of paragraph two.
> The owner of a newspaper or other mass media business shall be a Thai national as provided by law.
> No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media *(.***14***)*

The media is generally allowed to broadcast what they choose as long as it does not contravene slander and libel statutes. The current governing party in the Taiwan, the Democratic Progressive Party, gives or refuses broadcasting licences of television channels. The authority for censorhip in Taiwan since 2006 is the *National Communications Commission* (NCC), the Taiwanese equivalent of the American *FCC*. Taiwan's constitution in its preamble (Article 11) says that its people shall have freedom of speech, teaching, writing, and publication. Article 12 says that 'the people shall have freedom of privacy of correspondence' (**15**). The *Mass Communications Organization of Thailand* (MCOT) (Thai: บริษัท อสมท จำกัด (มหาชน)) is a Thai media conglomerate with origins dating back to the creation of Thailand's first television broadcaster *Thai Television Company Limited* in 1955. MCOT operates a television

[13] Department of Investment Services, MOEA. Ministry of Economic Affairs Taiwan. [2.2.2007] <Http://investintaiwan.nat.gov.tw/en/opp/telecom.html>
[14] Printed at the website: International Constitutional Law. University Bern. [2.2.2007] <Http://www.servat.unibe.ch/law/icl/th00000_.html>
[15] Printed at the website: International Constitutional Law. University Bern. [2.2.2007] <Http://www.servat.unibe.ch/law/icl/tw00000_.html>

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station, Modernine TV (formerlly Channel 9), and a nationwide network of 62 radio stations. Government policy and a national constitution protects freedom of expression encourage growth of the internet. The internet is regulated by the *National Information Technology Committee* (NITC), the *National Electronics and Computer Technology Center* (NECTEC), the *Telephone Organisation of Thailand* (TOT) and the *Communications Authority of Thailand* (CAT). Freedom of speech in Thailand is guaranteed in the articles 39, 40, 41 of the constitution. According to those articles, censorship may be imposed to preserve national security, maintain public order, preserve the rights of others, protect public morals, and prevent criticism of the royal family and insults to Buddhism. Criticism of the king is banned by the constitution. In Thailand the government filters internet traffic. *Freedom Against Censorship Thailand* (FACT) has initiated the *Banned Books Project* to scan as many books banned in Thailand as possible for free publication on the Web.

The *Ministry of Information and Communication Technology* blocks indirectly by informally 'requesting' the blocking of websites by Thailand's 54 commercial and non-profit internet service providers (ISPs). Other mechanisms for censorship include direct government/military control over the broadcast media, and the use of economic and political pressure. Under the *Printing and Advertisement Act* (1941) the *Royal Thai Police Special Branch* has the authority to issue warnings to publications for various violations such as disturbing the peace, interfering with public safety, or offending public morals. Thailand's constitution says regarding the king (Section 8) that the king shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action. Section 37 states that a person shall enjoy the liberty of communication by lawful means. The censorship, detention or disclosure of communication between persons including any other act disclosing a statement in the communication between persons shall not be made except by virtue of the provisions of the law specifically enacted for security of the state or maintaining public order or good morals. Section 40 of the constitution states that:

> Transmission frequencies for radio or television broadcasting and radio telecommunication are national communication resources for public interest.

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> There shall be an independent regulatory body having the duty to distribute the frequencies under paragraph one and supervise radio or television broadcasting and telecommunication businesses as provided by law.
> In carrying out the act under paragraph two, regard shall be had to utmost public benefit at national and local levels in education, culture, State security, and other public interests including fair and free competition (**16**)

Section 41 of the constitution states that:

> Officials or employees in a private sector undertaking newspaper or radio or television broadcasting businesses shall enjoy their liberties to present news and express their opinions under the constitutional restrictions without the mandate of any State agency, State enterprise or the owner of such businesses; provided that it is not contrary to their professional ethics.
> Government officials, officials or employees of a State agency or State enterprise engaging in the radio or television broadcasting business enjoy the same liberties as those enjoyed by officials or employees under paragraph one.(**17**)

De facto the government filters the Internet as part of its fight against pornography and has used it to extend censorship beyond this.

AFRICA – MASS COMMUNICATION IN DEVELOPING COUNTIES

Mass media cover not all of Africa. In many African nations other than the native languages are used, primarily English, serving as a national language in order to avoid privileging one particular spoken language or dialect. Many African newspapers, magazines, and radio broadcasts in the 21st century employ various vernaculars. Africa's linguistic diversity is a 'natural' hindrance to mass communication followed by colonisation, so that European languages like English and French are still widely used in the media. Communication in Africa is according to Obijiofor categorized into rural and urban forms, the urban associated with Western influences and the rural with local languages.

Rural communication is largely oral, with people expecting immediate feedback. Based on this premise, Obijiofor sees the telephone as the 'future' technology as it embraces the central element of African mode of communication –

[16] Printed at the website: International Constitutional Law. University Bern. [2.2.2007] <Http://www.servat.unibe.ch/law/icl/th00000_.html>
[17] Printed at the website: International Constitutional Law. University Bern. [2.2.2007] <Http://www.servat.unibe.ch/law/icl/th00000_.html>

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orality, while the Internet is considered too impersonal(**18**). In *Journalism and Mass Communication in Africa* edited by Festus Eribo and Enoh Tanjong, an analysis of mass communication in Cameroon within a historical framework was done explicating the development of print and electronic media, the relationship between journalists and the empowerment of the people, the growth of public relations, advertising, publishing industry and communication research (**19**) The use of the internet and mobile phones has grown relatively rapidly in most urban areas in Africa. The differences between the development levels of Africa and the rest of the world are much wider in this area than they are using more traditional measures of development: Of the approximately 816 million people in Africa in 2001 it is estimated that only 1 in 4 had a radio, 1 in 13 had a TV, 1 in 35 had a mobile phone, 1 in 130 had a PC, and 1 in 160 used the Internet(**20**).

Media in some African countries are institutionalized by the government in Ministries of Communication. African communication laws and communication tools are in progress. For example in Cameroon the main regulatory bodies are the *Cameroon Media Council* (CMC) and the *National Communications Council* (NCC). While the former is answerable to the *Minister of Communication*, the latter answers to the Prime Minister (**21**) Republic of South Africa's section 14 of the *South African Constitution* of 1996 states that everyone has the right to privacy, which includes the right not to have persons or homes searched, property searched, possessions seized,

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[18] Obijiofor, Levi. Future of Communication in Africa's Development. In: Futures. 30. No. 2/3 (1998). Pp. 161-174. P. 163

[19] Journalism and Mass Communication in Africa: Cameroon. Ed. by Festus Eribo and Enoh Tanjong. New York: Lexington Books 2002.

[20] See 2002 report of the The Association for Progressive Communications. [2.2.2007]
<Http://www3.sn.apc.org/africa/afstat.htm>
Internet Usage Statistics for Africa. (Africa Internet Usage and Population Stats).The Internet Coaching Library. [2.2.2007]
<Http://www.internetworldstats.com/stats1.htm>
The organisation *ARTICLE 19* provides information of legal analyses about the regions Africa, Asia, Europe, Latin America, and Middle East. The ARTICLE 19 *Freedom of Expression Virtual Handbook* is a resource providing access to international comparative standards on the right to freedom of expression. It is designed to be accessible to journalists, NGOs and others, while also providing high-quality legal information.
<Http://www.article19.org/publications/law/the-handbook.html>
See also: Publications related to freedom of communication in Africa. ARTICLE 19 Organisation. [2.2.2007]
<Http://www.article19.org/publications/regions/africa/index.html>

[21] Polity Organisation. [2.2.2007]
<Http://www.polity.org.za/html/govdocs/bills/2000/b14-00.pdf.>

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or the privacy of their communications infringed (**22**) On the invitation of the *Tanzanian Communications Regulatory Authority* (TCRA), the *African Communication Regulation Authorities Network* held a meeting on May 7-10, 2006 at Dar-Es-Salaam in the United Republic of Tanzania. The *Media Institute of Southern Africa* (MISA) is a non-governmental organisation with members in 11 of the *Southern Africa Development Community* (SADC) countries. The *World Association of Community Broadcasters* (AMARC) Africa is a network of community radio stations. The *Southern Africa Communications for Development* (SACOD) is a network of southern African filmmakers, film and video production organisations and distributors. *Sudan Organisation Against Torture* (SOAT) *Freedom of Expression Programme* has been active in voicing and increasing awareness on the human rights situation in Sudan in local and national levels.

The *Media Rights Agenda* (MRA) was established in 1993 as an independent, non-governmental, not-for-profit organisation for the purpose of promoting and protecting media freedom and freedom of expression in Nigeria. Journalism training and communication education in Africa have been a subject of studies and surveys at least since the late 1960s. Most of the educational institutions for journalism and communication are in the English speaking countries. Regarding Francophone Africa, there are 15 journalism and communication schools. In Portuguese-speaking Africa only two countries have journalism/communication schools. Various departments and schools of journalism and communication in African universities offer under-graduate and post-graduate teaching programs, but experience the local problems in their working environment.(**23)** Janet. Z. Karim stated for the *United Nations* that women's unequal access to means of communication and publishing in Africa is a major cause for the perpetration of the negative portrayal women get in the Africa media and the absence of the respect of women's human rights win fair portrayal(**24**). The

[22] Privacy International. [2.2.2007]
<Http://www.privacyinternational.org/survey/phr2003/countries/southafrica.htm>
[23] Cf. Kwame Boafo, S.T. Anglophone Africa: Progress Report. [2.2.2007]
<Http://www.uta.fi/textbooks/angloafr.html>
[24] Equal Acces of Women to Means of Communication in Africa including Publishing and the Respect of Women's Human Rights in Fair Portrayal. Prepared by Janet. Z. Karim.

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Declaration of Windhoek is a statement of press freedom principles put together by African newspaper journalists in 1991.

The Declaration was produced at a *UNESCO* seminar in Namibia in 1991; the document calls for free, independent and pluralistic media throughout the world. In Zimbabwe after cracking down on press freedom, President Robert Mugabe targets the Internet. Zimbabwe is one of the few sub-Saharan countries to have passed legislation specifically regulating online activities. The government adopted the *Post and Telecommunications Act* (PTA), regulating online activities, in November 2000. It allows the security services to monitor phone calls and e-mail and obliges ISPs and other operators belonging to the *Computer Society of Zimbabw*e to supply information to the authorities on request and give police and intelligence officials access to their equipment. It is not known how much use has been made of these provisions (**25)**

3. COUNTRIES WITHOUT 'FREEDOM OF SPEECH' OR ALTERNATIVE CONCEPTS IN THEIR CONSTITUTION

Mass Communication in Great Britain

There is no written constitution or comprehensive *Bill of Rights* in the United Kingdom. In England John Stuart Mill (1806-1873) in 1859 published a treatise named *On Liberty* mentioning the opinion (*opinio*) and *the liberty of expressing and publishing opinions*:

> The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion.
>
> The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan

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United Nations. Division for the Advancement of Women. Department for Policy Coordination and Sustainable Development. [2.2.2007]
<Http://www.un.org/documents/ecosoc/cn6/1996/media/mafricaen.htm>

[25] See: Zimbabwe. Reporters without Borders. [2.2.2007]
<Http://www.rsf.org/article.php3?id_article=10710&Valider=OK>

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> of our life to suit our own character; of doing as we like, subject to such consequences as may follow; without impediment from our fellow-creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse, or wrong ***(26)***

The legal system (Section 16 Right to Privacy) guarantees that

> (1) The common law allows people to speak and act in their own homes as they please and to carry on their daily business, provided that they do not infringe the rights of others or commit an offence.
> (4) Privacy and the Press: Action is being taken by the Government to deal with media intrusion into the privacy of individuals. The law against libel gives protection against attacks on a person's honor and reputation.
> (6)Interception of Communications: Legislation authorizes governmental interception of postal and telephone services but only on certain limited grounds. Any interception outside these procedures is a criminal offence.

In Section 19 Freedom of Expression is mentioned 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. It also mentiones:

> *(5) The independence of the broadcasters requires them to maintain certain standards regarding programs and program content. Under the relevant legislation and the codes of practice applied by the broadcasting authorities, programs must display, as far as possible, a proper balance and wide range of subject matter, and impartiality in matters of controversy.*
> *(6) According to 1991 European agreements on cross-border broadcasting, programs may not be indecent, contain pornography, give undue emphasis to violence, or be likely to incite racial hatred. Nor should programs unsuitable for children be broadcast when they can be expected to be watching.*
> *(7) Theater: There is no censorship of plays. It is, however, a criminal offence to present or direct an obscene performance of a play in public or private. Such a performance is defined as one which, taken as a whole, tends to 'deprave and corrupt persons who are likely to attend it'. There is a defence against* an obscenity charge on the grounds that the performance is for the public good in the interest of drama, opera or literature.
> (8) Films and Video: Government has no power to censor films. Cinemas are licensed by local government authorities, which have a

[26] Mill, John Stuart. On Liberty. Barleby. [2.2.2007]
<Http://www.bartleby.com/130/1.html>

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> legal duty to prohibit the admission of children under 16 to unsuitable films, and may prevent the showing of any film, although this particular power is hardly ever exercised. In assessing the suitability of films, authorities rely on the British Board for Film Classification, an independent non-statutory body to which films offered to the public must be submitted **(27)**.

Acts of Parliament like the *Obscene Publications Acts* and *the Racial and Religious Hatred Act 2006* can modify mass communication defining the legal bounds. The *Ministry of Information* was created during the First World War and then reformed for the Second World War for propaganda purposes. The Ministry was disbanded following the end of the Second World War. The *British Board of Film Classification* makes considerations about movies and games. The *British Board of Film Classification* is the film censor for films in Britain. Under the Video Recording Act 1984, all video recordings must be classified by an authority chosen by the *Home Secretary*. This classification is then legally binding. The *Broadcast Advertising Clearance Centre* pre-approves most British television advertising.

Australia

In the former British colony Australia no explicit legal or governmental protection of freedom of speech exists in the constitution. In the absence of a positive right to freedom of speech there is little protection against potential censorship on the part of government. Legislative and executive power can restrict freedom of communication on government or political matters. Australia is a federal nation, and responsibility for mass communication censorship is given neither wholly to the states, nor wholly to the federal government. The Australian constitution grants the federal Parliament that is constitutionally lawful to make laws governing communications and customs. The federal government has the power over communications and can legally regulate broadcast media (television and radio), online services (internet), and -controlling customs- regulate the import/export of printed matter, audiovisual recordings, and computer games. Legal restrictions on free speech concern a number of areas of law in particular circumstances such as contempt, obscenity law, blasphemy, and racial vilification, the regulation of internet

[27] Printed at the website: International Constitutional Law. University Bern. [2.2.2007] <Http://www.servat.unibe.ch/law/icl/uk00000_.html>

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content, and classification of film and literature through classification systems of the executing censoring organisations. Communication media in Australia are print products, telephone systems, communication solutions, data cabling, satellite telephony, radio systems, and telecommunication (28)

Australia's major telecommunications provider is the government-owned corporation, *Telstra* (Telecom Australia). Other telephone carriers include *Optus* (owned by Singtel), *AAPT* (owned by *Telecom New Zealand*) and the internationally operating company *Vodafone*. Responsibilities of the *Australian Communications and Media Authority* (ACMA) include promoting self-regulation and competition in the communications industry, while protecting consumers and other users and representing Australia's communications interests internationally **(29)**The *Communications Law Centre* (CLC) of Australia is an independent, non-profit, and public interest organisation specialising in media, communications and online law and policy (**30**) The *Office of Film and Literature Classification* (OFLC), a federal body, classifies works. Federal law enforces these classifications with respect to customs, and online services. The *Australian Communications and Media Authority* is active in making recommendations and setting guidelines for media censorship. Television is regulated by the ACMA, and the content of free-to-air commercial television is industry-regulated under the *Australian Commercial Television Code of Practice*. The classification system for visual content is largely standardised for television, videos, and feature films. Levels of censorship of books are high in Australia compared to other democratic nations. Australia's laws on internet censorship are amongst the most restrictive in the Western world. The *Australian Broadcasting Corporation* operates a system called 'Upwards Referral' for

[28] Cf. Smyth, R. Television, Video and the Empowering of Aboriginal Australia, Screening the Past. Melbourne: La Trobe University 1995. Pp. 186-194.
Hughes, P. Orality, Literacy, Television, Media International Australia, Aust. Film Television and Radio School. Sydney 1995. Pp. 145-154.
Hughes, P. "The Process of Government Communication. Some Semiotic and Cultural Considerations." In: Australian Journal of Public Administration. Inst. of Public Administration. Sydney 1995. Pp. 163-169.
[29] Australian Communications and Media Authority (ACMA). [2.2.2007]
<Http://www.acma.gov.au/WEB/STANDARD//pc=PUB_REG_ABOUT>
[30] Communications Law Centre (CLC). [2.2.2007]
<Http://www.comslaw.org.au/main_ver4.asp>

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bureaucratic censorship referring the issue to upper management within the organization. Australian civil society is exceptionally alert to online issues and the country is very well connected to the Internet. The *Broadcasting Services Act*, which came into force on 1 January 2000, lists material to be banned from websites, including child-porn, bestiality, excessive violence and information about crime and drug use. The arbiter of this is the regulatory *Australian Broadcasting Authority* (ABA). The senate amended the *Freedom of Information Act* (FOIA), the main law on message privacy, on 9 September 2003, with the aim of protecting children from online pornography.

> One of the most restrictive countries in terms of freedom of expression is Iran. The constitution of Iran says (Article 24 Freedom of the Press) that publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law. Article 25 Secrecy of Communication states that the inspection of letters and the failure to deliver them, the recording and disclosure of telephone conversations, the disclosure of telegraphic and telex communications, censorship, or the wilful failure to transmit them, eavesdropping, and all forms of covert investigation are forbidden, except as provided by law.(**31**). Here the right of freedom of expression is waved to the religious legal institutions.

3. NATIONAL INSTITUTIONS AND GLOBALISATION – THE UN AND OTHER TRANSNATIONAL AND GLOBAL INSTITUTIONS FOR MASS MEDIA RIGHTS

3.1. Mass Communication in the *European Union* (EU)

The media operating in Europe in the individual states between regions instates, and between countries expand and change. *Reporters Sans Frontières* conducts an annual survey on the freedom of the press and produces scores for each country. Freedom of the Press in the *EU* is most estblished in 2006 in Finland, Ireland, Netherlands, Czech Republic, Estonia, Slovakia, and Latvia (**32**). The development of media is part of the modernisation and globalisation of the society (**33**). The *European Union* made in the *Resolution 428* (1970) recommendations

[31] Printed at the website: International Constitutional Law. University Bern. [2.2.2007] Http://www.servat.unibe.ch/law/icl/ir00000_.html
See also: Afary, Janet. "Civil Liberties and the Making of Iran's First Constitution". In: Comparative Studies of South Asia, Africa and the Middle East. Vol. 25. Number 2. 2005. Pp. 341-359
[32] Reporters Sans Frontières. Worldwide Press Freedom Index 2006. [2.2.2007] <Http://www.rsf.org/article.php3?id_article=19388>
[33] See also: Nordenstreng, Kaarle. "Recent Developments in European Communications Theory." In: Journal of Communication Inquiry. Vol. 2. 2 (1977). Pp. 41-49

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containing a declaration on mass communication media and human rights. The assembly considered the proceedings of the *Symposium on Human Rights and Mass Communication Media* held in Salzburg in September 1968 recommending on on mass communication media and human rights proposing that the Committee of Ministers the following:

Declaration on Mass Communication Media and Human Rights

> A. Status and independence of the press and the other mass media
> 1. The press and the other mass media, though generally not public institutions, perform an essential function for the general public. In order to enable them to discharge that function in the public interest, the following principles should be observed:
> 2. The right to freedom of expression shall apply to mass communication media.
> 3. This right shall include freedom to seek, receive, impart, publish and distribute information and ideas. There shall be a corresponding duty for the public authorities to make available information on matters of public interest within reasonable limits and a duty for mass communication media to give complete and general information on public affairs *(***34***)*

Member states of the *European Agreement on the Protection of Television Broadcasts*, (ETS No. 034), entered into force July 1, 1961, have agreed in article 1 that broadcasting organisations constituted in the territory and under the laws of a party to this agreement or transmitting from such territory shall enjoy, in respect of all their television broadcasts hold in the territory of all parties to this agreement, the 'right to authorise or prohibit the communication of such broadcasts to the public' by means of any instrument for the transmission of signs, sounds, or images.[35] The *Directorate General Communication* of the *EU* works under the authority of the President and Vice President. Its mission is to inform the media and citizens of the activities of the commission and to communicate the objectives and goals of its policies and actions, to inform the commission of the evolution of opinion in the member states. In order to accomplish its mission, DG Communication co-ordinates

[34] EU Resolution 428 (1970). European Council. [23.2.2006].
<Http://assembly.coe.int/Documents/AdoptedText/TA70/ERES428.htm>
[35] European Agreement on the Protection of Television Broadcasts, (ETS No. 034). University of Minnessota. [2.2.2007]
<Http://www1.umn.edu/humanrts/euro/ets34.html>

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the activities of the representations in the member states, centralises all contacts with the media, seeks to ensure a coherent approach to communication and information issues within the commission.

This involves contacts with Directorates-General and services within the commission that have information units responsible for sectoral information. The DGs responsible for external relations provide information to citizens of third countries including information for the general public in applicant states (**36)** The *Directive 2002/58/EC* for the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector (*Directive on Privacy and Electronic Communications*) (OJ EC L 201, 31.07.2002, p. 37) stated in 2002 that member states ensure 'the rights and freedoms of natural persons' with regard to the 'processing of personal data', and in particular their 'right to privacy', in order to ensure the free flow of personal data in the community. This directive seeks to respect the fundamental rights and observes the principles recognised in particular by the charter of fundamental rights of the European Union. Confidentiality of communications is guaranteed in accordance with the international instruments relating to human rights, in particular the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, and the constitutions of the member states *Directive 97/66/EC* of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (5) translated the principles set out in *Directive 95/46/EC* into specific rules for the telecommunications sector. Legal, regulatory, and technical provisions adopted by the *European Union* member states concerning the protection of personal data, privacy, and the legitimate interest of legal persons, in the electronic communication sector, should be harmonised in order to avoid obstacles to the internal market for electronic communication in accordance with Article 14 of the treaty.

Harmonisation should be limited to requirements necessary to guarantee that the promotion and development of new electronic communications services and

[36] Directorate General Communication. EU. [2.2.2007]
<Http://ec.europa.eu/dgs/communication/index_en.htm>

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networks between member states are not hindered. Subscribers to a publicly available electronic communications service may be natural or legal persons. According to the *Directive on Privacy and Electronic Communications* a communication may include any naming, numbering or addressing information provided by the sender of a communication or the user of a connection to carry out the communication. Traffic data may include any translation of this information by the network over which the communication is transmitted for the purpose of carrying out the transmission. Traffic data may, inter alia, consist of data referring to the routing, duration, time or volume of a communication, to the protocol used, to the location of the terminal equipment of the sender or recipient, to the network on which the communication originates or terminates, to the beginning, end or duration of a connection. They may also consist of the format in which the communication is conveyed by the network. Service providers who offer publicly available electronic communications services over the Internet should inform users and subscribers of measures they can take to protect the security of their communications for instance by using specific types of software or encryption technologies. According to the *Directive on Privacy and Electronic Communications* confidentiality of communications should also be ensured in the course of lawful business practice. The data relating to subscribers processed within electronic communications networks to establish connections and to transmit information contain information on the private life of natural persons and concern the right to respect for their correspondence or concern the legitimate interests of legal persons. Article 5 on 'Confidentiality of the Communications' states that member states shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15 (1). This paragraph

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shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality **(37)**

Among the rights protected by the *European Union* law under the *Copyright Law* of the *European Union* is the right of communication to the public for authors, performers, producers of phonograms and films and broadcasting organisations (Art. 3, D. 2001/29/EC: also Art. 10 TRIPS, Art. 8 WCT and Arts. 6, 10 & 14 WPPT). In the *Declaration on Freedom of Communication on the Internet* (Strasbourg, 28.05.2003) adopted by the *Committee of Ministers* at the 840th meeting of the Ministers' Deputies the member states of the Council of Europe recalled the commitment of member states to the fundamental right to freedom of expression and information, as guaranteed by Article 10 of the *Convention for the Protection of Human Rights and Fundamental Freedoms*; The member states showed themselves concerned about attempts to limit public access to communication on the internet for political reasons or other motives contrary to democratic principles and emphasised the necessity to state firmly that prior control of communications on the internet, regardless of frontiers, should remain an exception stressing that 'freedom of communication' on the internet should not prejudice the human dignity, human rights and fundamental freedoms of others, especially minors. The member states declared that they seek to abide by the principles in the field of communication on the internet by 'not making content on the internet subject to restrictions' which go further than those applied to other means of content delivery. According to principle 3 of the declaration public authorities should not, 'through general blocking or filtering measures', deny access by the public to information and other communication on the internet, regardless of frontiers. This does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries. Member states should foster and encourage access for all to internet communication and information services on a non-discriminatory basis at an affordable price (**38**)

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[37] Directive on Privacy and Electronic Communications. (2002/58/EC). Datenschutz Berlin. [2.2.2007] <Http://www.datenschutz-berlin.de/recht/eu/rv/tk_med/tkdsr_en.htm>

[38] Declaration on Freedom of Communication on the Internet (Strasbourg, 28.05.2003). Legi- Internet. [2.2.2007] <Http://www.legi-internet.ro/index.php/Declaration_on_freedom_of_comm/98/0/?&L=2>
See also: Publications related to freedom of communication in Europe. ARTICLE 19 Organisation. [2.2.2007]

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The objectives of the work of the *UNECE Committee on Economic Cooperation and Integration* (CECI) in the thematic area of intellectual property are to 'contribute to building up local innovation systems', to 'help in commercializing intellectual property' and to 'improve the investment environment in creative, innovative and high technology industries in the UNECE region'(**39**). Some of the specific conditions of Europe which create various practices of intercultural coexistence are the East-West division of the continent and a mass movements of migrants and refugees. The *Directorate General Communication* of the *EU* has to inform the media and citizens of the activities of the Commission and to communicate the objectives and goals of its policies and actions. The *EU* uses the term 'communication' as a classification for any written documents within the organisation distributed to other members of the organisation and entities outside the organisation.

The EU is responsible for regulating the Internet and rulings often apply to member-states. A European directive on 8 June 2000 about e-commerce proved a threat to freedom of expression, by making ISPs responsible for the content of websites they host and requiring them to block any page they consider illegal when informed of its existence. This creates a private system of justice, where the ISP is called on to decide what is illegal or not and technicians having to do the job of a judge. The EU is now studying a proposal to oblige ISPs to retain records of customers' online activity. The proposal could limit Internet users' right to privacy. The *Council of Europe* and the *European Union* (*EU*) each have charters guaranteeing freedom of expression. European directives take precedence over national laws about Internet regulation. Article 10 of the *European Human Rights Convention* or the more recent *Charter on Fundamental Rights* defend freedom of expression.

3.2. INTERNATIONAL INSTITUTIONS AND ORGANISATIONS FOR MASS COMMUNICATIONS

<Http://www.article19.org/publications/regions/europe/index.html>
[39] Intellectual Property. United Nations Economic Commission for Europe. [2.2.2007]
<Http://www.unece.org/ceci/ip.html>

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In a speech on political communication in media society held on June 20, 2006 in Dresden to the *International Communication Association* (ICA) Habermas discussed the structure of mass-communication and the formation of considered public opinions:

> Deliberation is a demanding form of communication, though it grows out of inconspicuous daily routines of asking for and giving reasons (**40**).

Habermas wrote on communication in *Towards a United States of Europe*:

> Use of the Internet has both broadened and fragmented the contexts of communication. This is why the Internet can have a subversive effect on intellectual life in authoritarian regimes. But at the same time, the less formal, horizontal cross-linking of communication channels weakens the achievements of traditional media. This focuses the attention of an anonymous and dispersed public on select topics and information, allowing citizens to concentrate on the same critically filtered issues and journalistic pieces at any given time. The price we pay for the growth in egalitarianism offered by the Internet is the decentralised access to unedited stories. In this medium, contributions by intellectuals lose their power to create a focus ***(41).***

Examples illustrating the theories of the 20st century in terms of communication mass media mainly supported by and supported by the internet. Next to the traditional types of communication such as speech, literacy and visual media new qualities for communication – computer literacy – is since 20th century a medium necessary to participate in communication (**42).** The 20th century brings the communication theory as a more or less separate field of study into the disciplines of European studies (**43**). The topics of communication in the European countries included ethics, media practices and institutions, environmental, and cultural factors

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[40] Haberman, Jürgen. Political Communication in Media Society. Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research. International Communication Association. [6.6.2006]
<Http://www.icahdq.org/Speech_by_Habermas.pdf>

[41] Habermas, Jürgen. Towards a United States of Europe. [2.2.2007]
<Http://www.signandsight.com/features/676.html>

[42] See for the specific conditions of 21st century global communication:
Leslie, Larry Z. Mass Communication Ethics: Decision Making in Postmodern Culture. 2. ed. Boston [e.a.]: Houghton Mifflin 2004
Faria, Neide de. Language and Literature Today. Modernity and Postmodernity Communication, Technologies and Translation in the "Global Village." The Canon and Canonicity: Global Perspectives. Brasília 22 - 30 August 1993. General ed. Neide de Faria. Brasília: University Press 1996.

[43] Nordenstreng, Kaarle. "Recent Developments in European Communications Theory." In: Journal of Communication Inquiry. Vol. 2. No. 2. Pp. 41-49 (1977).

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affecting media ethics, the influence of policies and government on ethical media practice, ethical standards, the role of the press councils and journalists' unions, and the communication environment and the teaching of media ethics. Classical logic based on Aristotle aimed to deduce new 'truths' from those already known. Cultural, historical, and social sciences focus on the human subject as a communicating entity (44).

Recently European research came to results regarding poverty in the world and communication. In 2006 the *World Congress on Communication for Development* in Rome in Italy (October 25-27, 2006) made the final statement that communication is 'essential to human, social, and economic development'. According to this final statement the core feature of communication for development is participation and ownership by communities and individuals most affected by poverty and other development issues. A large and growing body of evidence demonstrates the value of communication for development. The participants in the *World Congress on Communication for Development* said in their recommendations in 2006 that for the year 2006 estimated 1.3 billion people world-wide still live in absolute poverty. Eventhough many countries have experienced considerable economic development and communication facilities, far too many remain worse off in economic and communicative terms.

> Ensuring that people have access to communication tools so that they can themselves communicate within their communities and with the people making the decisions that affect them– for example community radio and other community media *(***45***)*.

[44] Cf. also as standard works:
McPhail, Thomas L. Global Communication: Theories, Stakeholders, and Trends. Boston [e.a.]: Allyn and Bacon 2004
Wood, Julia T. Communication Theories in Action: An Introduction. 3. ed. Belmont, Calif. [e.a.]: Thomson Wadsworth 2004
Meunier, Jean.-Pierre. Introduction aux Théories de la Communication: Analyse Sémio-Pragmatique de la Communication Médiatique. 2. éd. Bruxelles: De Boeck 2004

[45] The World Congress on Communication for Development Rome, Italy – October 25-27, 2006. The Rome Consensus Communication for Development A Major Pillar for Development and Change. The Participants Word Congress on Communication for Development Rome. Italy October 27, 2006. Devcomm. [2.2.2006] <Http://www.devcomm.org/worldbank/vpr/pdf/Main_box/Recommendations.pdf>

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The *World Association of Newspapers* (WAN) is a non-profit, non-governmental organization made up of 72 national newspaper associations, 13 news agencies, nine regional press organisations and individual newspaper executives in 100 countries. Founded in 1948, the association represents more than 18,000 publications on five continents. WAN is a member of the *International Freedom of Expression Exchange*, a global network of non-governmental organisations that monitors free expression violations worldwide. Globalization produced new effects within cultural networks that are dispersed beyond national boundaries. As an effect more and more persons transcend their cultural heritage. Does this lead to a new cosmopolitanism? In the 'Global Age', the 21st century, we are not automatically liberated from local cultural limitations. But the changing global and transnational environments in which we live have become multicultural and request an appropriate *modus operandi*. Michael Lane Bruner considers the 'anti-corporate globalization movement' the 'last great social movement' of the 20th century, whose primary goal was to democratize international government organizations by opening up their deliberations to the public (**46**). The *United Nations Universal Declaration of Human Rights* adopted in 1948 provides in Article 19 that everyone has the right to opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Freedom of speech is granted unambiguous protection in international law by the *International Covenant on Civil and Political Rights*, which is binding on around 150 nations. Article 19 provides that everyone shall have the right to hold opinions without interference and everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Masayuki Deguchi writes in *Linguapolitical Issues in Global Civil Society's Networking*:

4. Communication between National Franworks for Mass Media and Globalization

[46] Bruner, Michael Lane. "Global Governance and the Critical Public." In: Rhetoric & Public Affairs. Vol. 6. 4. (2003). Pp. 687-708. P. 688

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Lyotard described in *The Postmodern Condition communicational transparency* as *ideology*:

> The ideology of communicational "transparency," which goes hand in hand with the commercialisation of knowledge, will begin to perceive the State as a factor of opacity and "noise." (**47**)

This is not meant to be an irony regarding the value of freedom of speech; furthermore Lyotrad expresses here the relation between the transparancy of communication and the resulting reception of the state as an object or included in this ideology. In other words: That what appears not as transparent, is a 'noisy' object. In most of the cases we have discussed the constitution gives the basic 'freedom of expression' to the people. The legal system and released acts regading specific forms of mass communication can modify this right. Permanent control is done by governmental institutions regarding the release of products of mass communication that are controlled either regarding the fulfilment of constitutional requirement or regarding several criteria imposed on the products of the mass media by the imstitution. This is the traditional centorship institution in an institutionalized form closly related to the government. This article reported on the contradictions, ambiguities, and paradoxes associated with the national constitutions and governmental institutions stating 'freedom of speech/expressions' or related freedoms in a comparision of several countries. Throughout this article all countries chosen have in common that they have no restrictions *expressis verbis* regarding freedom of expression in their constitution or legal system. The British tradition lacking a state has waved the value to other institutions. So it is interesting to see that they *de facto* have a very different attitute towards the regulation of products of the mass media industry. The idea of freedom of expression in a country had its origin in the European counties tracing back to the Enlightment and first republics. It had an enormous impact on the U.S. constitution. A general practice is the limitation of 'freedom of speech/expressions' in a hierachy with other freedoms and liberties guaranteed by the state. While this procedere in most case serves for the protection

[47] Lyotard, Jean-François. The Postmodern Condition. A Report on Knowledge. [2.2.2007] <Http://www.marxists.org/reference/subject/philosophy/works/fr/lyotard.htm>

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of other citizens, in some cases it forces the mass media to obey commonly practiced rules and habits; in the case of Iran the freedoms of individuals are controlled by Islamic law; in the case of Thailand Buddhism and the king stand over the value of free expression. Here public discourse that brings religious or monarchical sanctity and legitimacy into question is considered illegal, an essential feature showing lack of democratization in these countries. In the cases of the British and the Australian mass media decisions are made by controlling instances of the government or federal institutions for each case by published official standard classification systems. This process guarantees that objectivity is shown, even though the process itself can be called censoring.