



-STUDY GUIDE-

Y-MUN TRAINING
DEVELOPMENT CONFERENCE

SOCHUM

LETTER FROM SECRETARY-GENERAL

Esteemed delegates of the SOCHUM,

It is with great pleasure that I welcome you all to the 10th edition of Yeditepe Model United Nations Training and Development Conference as the Secretary-General. Organized by the oldest Model United Nations Club in Turkey, every year we try to use our knowledge to provide our participants with an exceptional MUN experience.

Being aware of the current issues that our world is facing, Y-MUN 2017 will simulate 16 different committees. Most of the committees aim to give our participants a demonstration of the world's most urgent problems while some special committees will take you to the past to simulate some crucial events. With our brilliant Academic Team, we are working to provide you the finest academic experience.

In SOCHUM, the delegates will discuss the issue of freedom of expression, that is actually blocked in many countries through the world. I would like to thank Mr. Onuralp Acar for providing me a study guide in such a quick notice. Lastly, I would like to give my thanks to my Deputy Secretary-General Mr. Uygur Berk Edebali who supported me greatly during this process and also Mr. Onuralp Acar and his deputies Ms. Dilruba Akçınar and Mr. Ömer Cem Sipahi for their work in creating this amazing conference.

Welcome where the journey begins!

Ege SÜREK

Secretary-General of Y-MUN 2017

LETTER FROM THE UNDER-SECRETARY-GENERAL

Dear Delegates,

I would like to embrace you in the Social, Humanitarian Cultural Affairs Committee (SOCHUM) of Y-MUN 2017.

I am Onuralp ACAR, and I am a senior at Yeditepe University, Faculty of Communication/Commerce I have been a member of the global MUN class since my preparation year at college.

This year's SOCHUM Committee is operating to address one vital topic under the theme of Humanity. Freedom of Expression is an agenda item that contains a broad kind of problems from the characteristics of the liberty to individual international instruments that ensure the right at global level.

I hope you enjoy the conference while debating and finding practical solutions. If you have any question, you may post an e-mail to onuralpacar@hotmail.com.

Sincerely;

Onuralp ACAR

Under-Secretary-General General Assembly Third Committee

THE SOCIAL, HUMANITARIAN CULTURAL AFFAIRS COMMITTEE

Social, Humanitarian Cultural Affairs Committee (SOCHUM) focuses on the examination of human rights questions as an essential part of its work. In March 2006, the General Assembly settled the Human Rights Council (HRC) by determining its commission and structure. HRC is expected to focus on preventing gross violations. Also, it is supposed to perform a head role in the formulation of policies and programs to fight against discrimination.

The Commission addresses several significant problems, such as the advancement of women, the security of children, indigenous issues, the method of refugees, the promotion of fundamental freedoms through the repudiation of racism and racial prejudice, and the right to self-determination.

A. INTRODUCTION

In the Black's Law Dictionary freedom is defined as: "The state of being vacant; autonomy; self-determination; absence of restraint; the opposite of slavery." Freedom of expression belongs to the freedom of "the act of expression and of the act of uttering, declaring or representing." Freedom of expression includes freedom of speech, press, and religion.

Freedom of speech is defined in the same dictionary as: "...to express one's opinions and beliefs without governmental constraints"; freedom of religion means "freedom to personally understand and to function or practice one's belief"; whereas the freedom of mass media organs refers to the "right to distribute and share one's thoughts and opinions without governmental without governmental constraints".

Democratic societies cannot overlook the vital part of freedom of expression. It is also a key to guaranteeing other fundamental rights that have significant roles in a democratic State. This freedom is essential for democracy and its improvement. Freedom of expression is perceived

as one of the mutually defending rights that understand the significance of the ability to form and express thoughts.

As a result of the contemporary law, the term 'constitution' inspired the idea of the restriction of the government with legal norms and the prevention of arbitrary regimes of the states. In the constitutionalism means, it was alleged that there should be a contract for securing the fundamental rights and liberties, including the freedom of expression.

Most significantly, most of the judgments presented by the national and international courts are associated to the command of the limitations of the freedom of expression. Constraints play an essential role in the application of the treaties, which provide the freedom of speech. For instance, when there is an illegal restriction of an individual's freedom of expression, all the people in the society are directly affected; since their right to 'receive' information and ideas is also restricted. It should also be remarked that freedom of expression is not restricted to the 'message' or 'ideas,' which are "favourably obtained or regarded as friendly or as a matter of indifference, but also to those that provoke, shock or confuse the state or any sector of the population."

In light of the statements made above, the concept of expression and the associated legal tools will be further explained under this Agenda Item. In the idea of freedom of speech, the morality of freedom of expression and its relation to democracy will be considered. As to the section of the legal instruments, important international conventions and cases will be presented.

B. THE CONCEPT OF FREEDOM OF EXPRESSION

I. The Right to Freedom of Expression

The right to freedom of expression proposes the protection of the freedom of expression in a democratic Country. However, it has more than one or more dimension as the right to freedom of speech is not only regarded as the security of the essence of the opinions and information displayed but also the method of which these views and data are carried.

II. Freedom of Expression in Democracy

Freedom of expression has been won after ages of struggles. Today, it is one of the foundational values of the United Nations and the regional human rights bodies. In the contemporary life of the 21st-century democracies, freedom of expression has a very close linkage to democratization process. It is regarded as an 'indispensable channel for immaturities, political opponents and civil society to nurture and foster public debates. Therefore, interference to this right can be tolerable only by 'imperative necessities' in modern democracies.

There are certain types of different categories of expression in the society, and these are

- (1) political expression,
- (2) Civil expression,
- (3) Artistic expression and
- (4) Commercial expression.

In following sections, these categories will further be explained.

III. Social Character

Freedom of expression does not mean the simple protection of individual rights and liberties against state interference. Also, it protects the individual's freedom in communication with

other members of the society. It is argued that the freedom of expression has a social character in the community. Richard Moon, a professor at the Faculty of Law at the University of Windsor in Canada, explains this role as follows: "The right of the individual is to participate in an activity that is deeply social that involves socially created languages and the use of community resources...[T]o express something is to enter into a dialogue-into communicative relationship with other members of the community". It is agreed that the freedom of expression has a much broader aspect than state interference. Since the freedom of speech is primarily related to communication, suppression of this freedom results in a population that is unable to reflect upon significant questions of value in society. Consequently, freedom of expression is regarded as a means for the interchange of ideas and information among individuals and mass communication in the social dimension. If the discussion that is based on the freedom of expression were suppressed, the result would be a population, which is inhibited in its ability to reflect upon important questions of value and a society that is closed and rigid rather than "free and democratic."

IV. Universality of the Freedom of Expression

Human rights are fundamental for all human beings, regardless of community, place of residence, sex national or ethnic origin, religion, colour, language, or any other status. Human rights are considered as universal and are often expressed and guaranteed by the international law instruments. Regardless of its political or territorial entity, the right to freedom of expression is not limited, and this right can only be restricted in the prescribed manner. Freedom of expression is one of these universal rights, and it has taken part and was reiterated in resolutions, conventions, and declarations, such as the Universal Declaration of Human Rights, European Convention on Human Rights, African Charter on Human and Peoples' Rights.

V. Relation with Other Rights

All human rights and freedoms are regarded as indivisible and cannot be separated whether they are civil or political rights. The freedom of expression, as one of the political rights, is interrelated with the public, political, economic and cultural rights. The preferment of human rights in Countries depends on the improvement of each right. Development of the freedom of expression is a key to the advancement of human rights in a democratic society.

VI. Content of Freedom of Expression

Substantively, the freedom of expression contains several other freedoms in its complex content. There have been various types of freedom among the content of the freedom of expression. In the following sections, it is argued that it comprises of interdependent rights and freedoms such as freedom of opinion, freedom of information, freedom of the press and right to assembly.

a. freedom of opinion

Freedom of opinion is not only accepted as a basic right but also as a part of the freedom of expression. Nevertheless, the difference between freedom of opinion and freedom of expression is that the former is regarded as a private matter, while the latter is considered to be a public matter.

The importance of freedom of opinion is emphasized in the General Affairs Council Meeting of the European Union with these conclusions:

“Freedom of opinion and expression is necessary to create pluralist, tolerant, broad-minded and democratic societies. By allowing free debate and exchanges of ideas, and by disseminating information on human rights abuses and calling for accountability, independent media, press, television, internet, and other new media, freedom of expression plays an important role in the fight against intolerance.”

Furthermore, freedom of opinion is regarded as a cornerstone of every free and democratic society, and also it is crucial for attaining and defending other rights and freedoms. In the abovementioned meeting, the link between this democracy and the rights was underlined by the following statement: “[F]reedom of religion or belief is intrinsically linked to freedom of opinion and expression... The Council emphasizes the strategic value of freedom of religion or belief and of countering religious intolerance, and reaffirms its intention to continue to give priority to the issues as part of the European Union’s human rights policy”.

b. Freedom of Information

As the “integral part of freedom of expression,” freedom of knowledge means “the right to access information held by public bodies.” This freedom is also called as the “freedom to seek,” which means that a person has a right to access to information, and it can only be subject to prescribed restrictions.

In the scope of the freedom of expression, it is indispensable that media should be free. The term ‘media’ includes several legitimate ways of broadcasting of programmes over the air and cable retransmission of such programmes, television, and the communication of matter through mail or telephone system where any person of the society could use them to dial a specific number and listen to a pre-recorded message. Today, theatres, movies, and social media are also regarded as legitimate and significant means of media.

According to the view of the European Court of Human Rights, freedom of information is not limited to ‘information’ or ‘ideas’, which are received or considered as inoffensive or as an issue of indifference, but also those that ‘offend, shock or disturb the state or any sector of the

population'. The Court further adds that 'such are the demands of that pluralism, tolerance, and broadmindedness without which there is no democracy.'

Democracy and freedom of information Are highly interconnected to each other. Justice aims that the individuals can participate successfully in decision-making processes. Such participation is based on access to "a variety of information held by public bodies." This information may be related to various matters of public concern that are associated with the decision making processes, such as the state of the economy or the social system.

Mainstreaming of freedom of information is regarded as the contribution of the freedom to democracy, government openness, and accountability.

c. Freedom of Press

Freedom of the press was derived from the freedom of expression as it is stated at the first sessions of United Nations General Assembly in 1946 with the adoption of resolution 59 (1), which is as follows:

"[F]reedom of information is a basic human right and the standard of all the freedoms to which the United Nations is dedicated. Freedom of information indicates the right to gather, transfer and distribute news anywhere and universally without fetters. As such it is an indispensable factor in any serious effort to improve the unity and progress of the world."

Free press in a democratic society has to be independent and pluralistic and this means that the media has to be 'independent of governmental, political or economic control or control of materials essential for its production and dissemination, and pluralistic through the absence of media monopolies and the being of the greatest possible number of newspapers, magazines, and periodicals displaying the extensive possible range of opinion within the community'.

Furthermore, the position of the press as a “public watchdog” is considered a crucial aspect of democracy’s political process. The press and investigative journalism safeguard the healthy operation of democracy. Also, the press and journalism are “exposing policy decisions and actions or omissions of government to a scrutiny of the public opinion, and facilitating the citizen’s participation in the decision-making process.”

Another guarantee that the freedom of press provides is the confidentiality of journalistic sources, which is also regarded fundamental for press freedom. The protection of the privacy of journalistic sources prevents the well-informed public from being jeopardized.

d. Freedom of Association

Freedom of association means ‘the right to form groups, to organize and to assemble with the aim of addressing issues of common concern is a human right.’ Freedom of association lies at the centre of a democratic society in 21st-century democracies. This right to freedom of association ensures the protection of the right to join or form relationships, xciii along with providing the reasons to join or form political parties or a trade union.

C. INTERNATIONAL INSTRUMENTS

I. In General

LEGAL

The relation between democracy and freedom of expression are outlined in significant conventions. As the Contracting Parties of the below mentioned Conventions, States have agreed upon the issue that this independence must be recognized at an international level to provide effective protection.

The scope of the freedom of expression should be well defined in the provisions of the regulations of States, especially their constitutions. Otherwise, this freedom may be violated,

because of the wrong implementation with the review of the Courts or the drafts of the lawmakers. For instance, if the scope is broadly defined, individuals or the group can be given harm on the grounds of this freedom. Therefore, the reasons behind limiting the freedom to communicate that draw the borders of the scope of liberty should be well drafted.

II. International Instruments

a. 1948 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (from now on referred to as 'Declaration') was proclaimed in Paris on 10 December 1948 by the General Assembly Resolution 217 A (III).

The signing of the Declaration has been a universal standard of achievements for all peoples and all nations with regards to the recognition of human rights at an international level.

Today, the Declaration has no legal effect on the signatory countries of the resolution in which the Declaration was adopted.

However, the Declaration is regarded as an inspiration for more than 60 international human rights instruments, and most of them are legally binding treaties. Therefore, these specific agreements can be deemed to constitute a comprehensive system that consists of legally binding treaties for the protection of human rights. In this legal system, the articles of the Declaration are referred to in customary international law, and they are mentioned as general principles.

The article of the Declaration related to the freedom of expression in Article 19 in which the freedom of expression is guaranteed as follows:

“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.”

b. The Covenant on Civil and Political Rights

As part of the International Bill of Human Rights, the Covenant on Civil and Political Rights (ICCPR) has been one of the key international instruments that provide a wide range of protection of persons' civil and political rights. The contracting parties of the ICCPR has to fulfil their obligations "to protect and preserve basic human rights such as the right to life and human dignity, equality before the law, freedom of speech, assembly and association, religious liberty and privacy, freedom from torture, ill-treatment and arbitrary detention, gender equality, fair trial and minority rights".

The ICCPR set forth the protection of the freedom of expression in Article 19 (2) and (3) of the ICCPR as follows:

"2) 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 print, in the form of art, or through any other media of his choice.

3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- a) For respect of the rights or reputations of others;
- b) For the protection of national security or public order (order public), or of public health or morals."

III. Regional Instruments

a. European Human Rights

i. General

As a regional an organization with its Member States, the Council of Europe aims to defend human rights and democracy at parliament and other decision-making authorities, and the rule of law.

The Convention for the Protection of Human Rights and Fundamental Freedoms, or the European Convention on Human Rights, entered into force on 3 September 1953. In this Convention, an international judicial organ was founded to supervise States because of their actions that are not by the Treaty.

There are two paragraphs in Article 10 (1) of the European Convention on Human Rights, and the first paragraph follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

Under this Article, the ECHR emphasized in its decision that the Convention On intergovernmental 'freedom of expression constitutes one of the essential foundations of a democratic society, and one of the basic conditions for its progress and each's self- fulfilment.

ii. Restrictions on the Freedom of Expression

The notion of freedom of expression is closely connected with the ideas of freedom of thought, conscience and religion mentioned in Article 9. Also it is linked to Article 8, which provides for general privacy within the meaning of the right to privacy. Several rulings of ECHR have emphasized that the Convention does not merely 'safeguard the kind of information or opinions that are favourably received or that are held to be inoffensive or inconsequential, but also those that offend, shock or disturb.' According to the Court, 'these are required for a democratic society whose basic values reflect pluralism, tolerance, and broadmindedness.'

In the same article, the Article 10 (2) of the Convention provides the conditions for the restrictions as follows:

“2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”

According to the second paragraph of this article, the expression of opinions and information can be restricted. The States can impose limits to such freedoms when it is necessary. They can impose formalities, conditions, restrictions, and penalties. Most significantly, these reasons should be considered inclusive and have to be narrowly interpreted.

Moreover, States can only impose restrictions on this freedom on conditions provided in this paragraph. These conditions are “the national security, territorial integrity and public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, preventing the disclosure of information received in confidence, and maintaining the authority and impartiality of the judiciary.”

iii. Specific Categories of Freedom of Expression

1. Political Expression

The first category of freedom of expression is the political expression. In contemporary democracies, it is necessary for “a government to be exposed to close scrutiny not only by the legislative and judicial authorities, but also by the general public and mass media” In this regard, the national authorities are entitled to grant immunity statements given in parliamentary debates in the legislative chambers to guarantee the interest of parliament as a

whole. The relation between the political parties and the freedom of expression was explained as follows:

“one of the principal characteristics of democracy [is] the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State’s population and to take part in the nation’s political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned”.

2. Civil Expression

As one of the categories of freedom of expression, civil expression covers social, cultural or even commercial expression. The Civil expression is described as the claims that are of public interest. Social media is in the meaning of a civil expression.

In today’s world, the speed of the Internet has spread throughout the world regarding getting and transmitting information. If the press of a State is rigidly controlled, the Internet may be a platform for greater freedom of expression and communication. Individuals who have accesses to a computer and an Internet connection can publish and reach “a potential audience of millions” for free instantly. Therefore, many regional governments have been pursuing contradictory policies when faced with such technology. Human Rights Watch has published a document, “False Freedom: Online Censorship in the Middle East and North Africa” and reported, related to the current application of censorship, that “With varying degrees of enthusiasm, they have sought to facilitate the spread of communications Economic benefits in mind. At the same time, they have sought to maintain their old monopolies over the flow of information and technologies with information”.

Also in this report, there are recommendations to governments who are claimed to control the media as follow:

“1) Governments should continue to invest in expanding access to the Internet. Money spent on improving networks should not be diverted to improving surveillance or censorship technology.

2) Release all those imprisoned or detained solely for exercising their right to free expression, online or otherwise.

3) Cease intimidation and harassment of online writers.

4) Cease blocking Web sites that carry material protected by rights to free expression and free information.

5) Governments should provide strict legal guarantees ensuring the privacy of electronic communications. Governments should have authority to monitor email or other forms of electronic communication only when authorized by an independent court of law upon a compelling showing of genuinely criminal activity.

6) Governments should repeal laws that unduly abridge the right to privacy or the right to freely access or disseminate information or opinions. They should further seek to pass new laws that

affirmatively protect these rights and clarify the narrow circumstances in which government interference would be warranted according to international standards.

7) Allow free and unimpeded access to Internet cafés and Internet-connected libraries for all, and do not require such businesses to provide customer records without a specific court order based on a compelling and particularized showing of need.

8) Do not allow criminal liability for merely visiting Web sites, even those that may legitimately ban under international standards of free expression and information”.

3. Artistic Expression

Artistic freedom is considered not only crucial for the present democratic societies but also regarded as essential for the 'enrichment of humanity and diversity of civilizations.' The state is under the obligation not 'to encroach unduly on the author's freedom of expression.'

4. Commercial Expression

The main goal of commercial expression is to augment the economic interest of individuals and enterprises. Under some circumstances, the publication of items as commercial expression can be prohibited. "The obligation to respect the privacy of others" and "the duty to respect the confidentiality of certain commercial information" can be given as examples.

D. RESTRICTION OF FREEDOM OF EXPRESSION

Figure 1: The Categorization of the Restrictions on the Exercise of Freedom of Expression

Restriction on Exercise of Freedom of Expression

Protection of the Public Interest

Protection of other Individual's Rights

Protection of the Reputation of Rights of others

Maintaining the authority and impartiality of the judiciary

National Security

Territorial Integrity

Prevention of the Disclosure of Information Received in Confidence

Public Safety

Prevention of Disorder or Crime

Protection of Health or Morals

1. Grounds Recognized in International/National Instruments

📖**The Protection of National Security:** National security is defined in the Oxford Dictionary as “the safety of a state or organization against criminal activity such as terrorism, theft, or espionage.” This is regarded as one of the most solid grounds that State authorities claim as a counterweight to freedom of expression. As it is explained above, this definition should be interpreted narrowly.

📖**The Prevention of Disorder or Crimes:** As being akin to the ground of national security, the main goal of preventing disorder or crimes has been considered as invoked by the national authorities in combating terrorism and other crimes. It is further underlined that “the authorities of a democratic State must tolerate criticism, even if it may be regarded as provocative or insulting.”

📖**The Protection of Morals:** There is no consensus on the requirements of morals which has various natures within a State’s country. Even if there is no consensus among the States, they are many common values and standards.

📖**Protection of the Reputation and Honour of Private Individuals:** In the contemporary age of information, there can be an intrusion into privacy to feed the curiosity of the public about the private lives of public figures. The important point is that this may create tensions between the interests of journalists in imparting information to the public in the society. The scope of the journalists’ duties and responsibility is regarded as narrower than the duties to inform the public about the public figures.

With regards to privacy, it is underlined that the public does not have “the right to be informed even of aspects of private lives of public figures.” However, the condition under which “private aspects of public figures can be examined enough for their public function to justify their disclosure” has a discussion the Protection religion or others: This ground of restriction has been creating numerous clashes between free speech rights and the freedom of

religion. The ‘duties and “responsibilities” of those who enjoy the right to freedom of expression, covers “a duty to evade expressions that are gratuitously insulting to others and temporal” and “which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.” Apart from these explanations, it should be noted that there is no consensus been open to of the Freedom of on “what is required for the protection of religious convictions and beliefs may justify a broad margin of appreciation.”

🏛️ **The Prevention of Disclosure of Confidential Information:** This legitimate ground is interpreted as “encompassing the disclosure of confidential information by a person who has received the information subject to a duty of confidence, or by a third party, including a journalist, who has received is subject to no such duty.”

🏛️ **The Maintenance of the Authority and Impartiality of the Judiciary:** In general, the national courts of States are allowed to “hold criminal proceedings in camera, excluding journalists or the public.” This exclusion is regarded as the goal for the protection of the “privacy rights of juvenile offenders, preventing disorder or crime, maintaining the authority and impartiality of the judiciary, or protecting the rights of others.”

2. Evaluation of the Grounds

In cases dealing with restrictions of the people’s reputation, the evaluation is mostly related to the issues on the right to tender criticism and on the responsibility of the receiver of the criticism to bear that criticism. Most significantly, politicians are the persons who are handling criticism. It is underlined that the freedom of political debate is fundamental for a democratic society and for this reason the Court adds, “a politician who is acting in the capacity of a politician can be subjected to more stringent criticism than ordinary citizens”.

Another significant condition is related to judicial organs and persons who work for them. In Barford case, Mr. Barford was held criminally responsible for publishing an article in which Mr. Barford criticized a judgment delivered by the High Court of Greenland.

This Article ensures the protection of the substance of information or opinion. In the ECHR rulings, the Court underlined that the “Convention does not merely safeguard the kind of information or opinions that are favourably received or that are held to be inoffensive or inconsequential, but also those that offend, shock or disturb.” The ECHR emphasized that the substantial protection is regarded as one of the fundamental requirements for a democratic society.

As an integral part of freedom of expression, the freedom of information is mentioned in this Article. The rulings of the ECHR clarify the restrictions regarding the freedom of information as: “Article 10 does not impose a general obligation on the government to surrender information from authorities' documents even in such a case that the information would be of personal concern to the individual seeking the information”.

Restriction of freedom of expression is basically defined as: “to single out particular meanings that may not be conveyed, or to restrict a form of expression in order to control access by others to the meaning being conveyed, or to control the ability of the one conveying the meaning to do so, is to restrict the content of the expression to be conveyed”.

According to the international instruments, any restriction related to the exercise of the right to freedom of expression must be ‘provided by law’ that is provided in Article 19 of the ICCPR, ‘prescribed by law’ that is provided in Article 10 of the ECHR 10, or ‘established by law.’

3. Practical Outcomes of the Evaluation

In this part, several cases of the ECHR are presented with their summaries to understand the cases related to legitimate restrictions. In these cases, some of the situations amounted to a violation of Article 10, according to the judgments of the Court. These decisions of the cases were rendered in the topics of the press, broadcasting, access to information, commercial statements, protection of general interest and individual rights and the impartiality of judges.

First, in the Engel and others case, the Court ruled that disciplinary sanction is given to Dutch soldiers because they had published articles, which were undermining military discipline. Since their intention was not to deprive their freedom of expression, but to punish the abuse of that freedom, the Court considered that this did not amount to a violation.

Another case related to the scope of freedom of expression in the press is the Sunday Times case. In this case, the Court found there was a violation of the freedom of expression. The reason was the restraining of the publication in the Sunday Times of an article regarding a drug and the litigation linked to its use. Such restriction was not considered as “necessary in a democratic society” according to the English law.

There are several defamation cases in the press, and these cases are regarded as damaging the good reputation of people. In one of these cases that is related to the defamation, namely the Lingens Case, it is noted that the “freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political Leaders.” The Court also explained the scope of basic principles with regards to the press and freedom of expression in the following paragraph:

“While the press must not overstep the bounds set, among other things, for the “protection of the reputation of others,” it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them”.

In the Weber Case, the Court examined the decision of conviction of a journalist who disclosed information on a pending judicial procedure during a press conference because the person violated the secrecy of the investigation, guaranteed by the Code of Criminal Procedure of the Canton of Vaud. The Court ruled that "so far as it resulted in an interference in freedom of expression which was not necessary for a democratic society for the realisation of the intended legitimate purpose" and further added that "information had already been disclosed during a previous press conference and therefore the interest in keeping secret some facts are already known by the public no longer existed".

In the Oberschlick Case, the Court examined the situation in which a libel action was brought against the applicant by an Austrian politician and a subsequent conviction of the applicant occurred. The Court decided that the statements of the applicant were considered as judgments of value and this interference to the freedom of expression was not necessary for a democratic society.

Another significant case, in the Castells judgment, the Court held in the conviction of the applicant that a member of the Spanish Parliament, there had been a violation of Article 10 on the grounds that this person published an article encompassing accusations to the Government with regards to the attacks supported by the Government on specific groups. The Court also made several significant points in its observation as:

“The pre-eminent role of the press in a State governed by the rule of law must not be forgotten. [...] Freedom of the press affords the public one of the best means of discovering

and forming an opinion on the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.”

In today’s world, the government’s response to peaceful anti-government protests may demonstrate its tolerance level towards the freedom of expression. It is seen that police repeatedly dispersed and used excessive force with water cannons, rubber bullets and tear gas towards protesters who were entirely peaceful.

4. Special Emphasis: Censorship

ECHR proscribes ‘prior censorship,’

Expect for several cases. ICCPR allows ‘certain restrictions’ as are ‘necessary’ and ECHR permits that the right to freedom of expression can be subject to ‘such restrictions, formalities, conditions, restrictions or penalties’ as are necessary for a democratic society’ to protect similar interests of objectives.

Both ICCPR and ECHR clauses are based on the need for restrictions and limitations on ‘duties and responsibilities, which the right to freedom of expression is linked to.

As to the restriction of the freedom of expression in the scope of ‘necessary’ circumstances, the “existence of a pressing social need” is imperative. Therefore, freedom of expression means that in cases where the freedoms of individuals and the community itself are endangered, freedom of expression can be suppressed. Such danger should not be “remote conjectural or far-fetched” but should “have a proximate and direct news with the expression.”

A censorship

Another critical issue is the rights or reputations of persons, in case restriction to freedom of expression is imposed. The correct balance between the right to communicate information liberally and the right to respect for the reputation of the person to whom the information relates must be found. In the scope of access to and use of information, precise criteria must be prescribed by law for determining which data is to be restricted.

It should be considered that practices could shape the political environment. Many of the constitutional provisions related to the media freedom may also have the laws that criminalize “reporting on some politically sensitive issues,” such as several national courts that hold that depicting the genocide in history is a crime.

E. CONCLUSION

Today it is evident that the 21st century’s democratic States will attain and sustain their national unity, political stability, and economic growth by a greater protection and promotion of the freedom of expression. Also, they can safeguard their cultural and religious integrity by guaranteeing this freedom.

The free exchange of ideas is essential for the effective formation of public opinion. To foster transparency in government and to combat corruption, access to information is vital in a democratic State in the 21st Century. Due to its main role in the development of democracy, the States should focus on the freedom of expression and its necessary protection and minimal restrictions. The application of limitation on the freedom of expression has been one of the most disputed areas in contemporary human rights law in history. Most importantly, the issue of restriction of the freedom of expression is the interplay between the principle of freedom of expression and the prescribed limitations, which govern the actual scope of the individuals’ rights. In a democratic society, the restrictions imposed by the States must be provided by law

and must be narrowly interpreted. The dissenting opinion in the famous case in 1919 at the Supreme Court of the United States of America, Oliver Wendell Holmes expressed his thoughts with regards to the freedom of expression with these words:

"Persecution for the expression of opinions seems to me perfectly logical. If you do not doubt your premises or your power and want a certain result with all your heart, you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care wholeheartedly for the result, or that you doubt either your power or your premises."

F. POINTS THAT A RESOLUTION SHOULD COVER

In light of the problems described in the preceding parts, the General Assembly Third Committee is required to pass a complete resolution, which should include these points:

■ The recommendations of the Committee as to the maintenance of freedom of expression in the 21st century States,

The recommendations of the Committee regarding the problem of the unlawful restrictions in several States,

■ The advice of the Committee regarding the protection of the freedom of opinion, freedom of freedom and freedom of information,

■ The stance of the Committee about the universality of freedom of expression,

■ The recommendation of the Committee regarding the promotion of the freedom of expression in societies,

The suggestions and stance of the Committee about the effective application of the Universal Declaration of Human Rights and other International Human Rights Instruments