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A PLEASANT BUT DANGEROUS HUG: SECURITY LIMITATIONS OF PRESS FREEDOM

Embattled Israel's security situation has required the development of a delicate balancing arrangement between the state's defense needs and its democratic commitment to freedom of the press. By and large Israel has met the challenge but only through the use of appropriate institutional arrangements that provide needed checks and balances. The following two articles are illustrative of the kinds of challenges faced by journalists and the authorities and how they are met.

I. THE ELECTRONIC MEDIA AND THE IDF SPOKESMAN

by Yisrael Landres

In the national interest. The spokespersonship arrangement and its aftermath. Repercussions from the past.

When the first Mystere planes arrived in Israel from France in 1975, the then editor of *Ma'ariv*, Arye Dissentshik, was present at the festive and secret occasion. It was, of course, incumbent upon him to keep all that he had seen and heard a complete secret, and he fulfilled that duty faithfully. Half a year later another clandestine shipment of Mystere planes made its way to Israel. Unfortunately, the Arabs discovered the planes while they were being refueled at an airport in Northern Italy. The defense establishment then decided to practice a deception in order to confuse the enemy. Operating on the assumption that the Arabs had also come to know about the first shipment of Mystere planes, Dissentshik was asked to publish an item in *Ma'ariv* reporting that technical flaws had been discovered in the first twelve Mystere planes, they had been sent to France for repairs--and were now being returned to Israel. The

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publication was intended to mislead the Arabs and to create the impression that Israel had received only one shipment of Mystere planes. For that purpose Dissentshik was permitted to publish his description of the arrival of the first planes.

IN THE NATIONAL INTEREST

Dissentshik's story about this affair (*Ma'ariv*, 5.11.76) sheds light on one facet of the complex relationship between the Israeli media and the defense-political establishment. The establishment authorities are prepared to expose the press to sensitive security information, on the condition that it be kept secret. And at times, the establishment will consent to the publication of this class of information in a way which--in its opinion--serves the national interest. Out of a feeling of national responsibility media representatives consent to adjust or limit publication along lines dictated to them as security needs. Sometimes they have gone so far as to disseminate disinformation.

Whoever dreams about a "responsible press which serves the national interest" can derive great pleasure from the publications about the "Mystere." But one cannot ignore the dangers latent in an exaggerated willingness by the media to adjust their viewpoint to that of establishment spokesmen. At the time of Kennedy's presidency, the *New York Times* could have prevented the abortive invasion at the Bay of Pigs, had it published prominently everything it knew about the upcoming mission. The Israeli media could have disturbed the atmosphere of calm which prevailed on the eve of the Yom Kippur War had they published prominently the information they had about the alert status and deployment of the Syrian and Egyptian armies. But the media in Israel acted "responsibly," and complied with the wish of establishment representatives to avoid prominent publication, in the name of the national interest.

It must not be inferred from this that the media must always publish secret information against the determination of establishment representatives. But it would be better for the printed and electronic media to jealously preserve their rights and their sphere of action which in any case are limited. Dr. Dina Goren, in her book *Secrecy, Security and Freedom of the Press*, cites president of the Press Council, Dr. Yehoshua Rotenstreich, who said that should--heaven forbid--a dictatorship be established in Israel, it would not have to introduce many changes in the legal system in order to prohibit publications that it does not like. The existing restraints are sufficient--the media ought not to consent to additional bonds.

THE SPOKESMANSHIP ARRANGEMENT AND ITS AFTERMATH

Because of the nature of the present situation it is difficult to accept the the agreement between Israel Television and the office of the IDF spokesman. In the memorandum of understanding between the Authority and the IDF spokesman, called "The Spokesmanship Arrangement," it was agreed, in September 1980, that in addition to military censorship, the IDF spokesman would supervise

broadcasts on security matters. According to the agreement, the IDF spokesman would attach to every broadcasting source a senior representative who would exercise his judgement about all the material being transmitted. This is in addition to the actions of the military censor. The agreement also stipulated that "the IDF spokesman or his representative will be allowed to veto all transmissions or parts of transmissions which in his opinion harm the army, the security or the morale of the troops, (whether) at the front or in the rear." In other words, Israel Television is to observe not only the far-reaching censorship regulations imposed upon all the papers; but according to the terms of "The Spokesmanship Arrangement" Israel Television has voluntarily take upon itself additional limitations.

But what had been consented to by representatives of the Broadcasting Authority has met with a firm objection on the part of State Comptroller Yitzhak Tunik. He considered the Spokesmanship Arrangement an illegal infringement of the Broadcasting Authority's independence and of the basic liberties of a democratic regime. According to Tunik, it is inconceivable that the Broadcasting Authority sign an agreement which limits the freedom of publication endowed by law. In a discussion held on this issue in the Knesset Comptrol Committee, Tunik told the Broadcasting Authority representatives: "The question is, who is to decide that there is an emergency? Who is to decide the extent of the emergency? Who is to decide on the steps to be taken for the sake of the emergency, and who in Israel is authorized to limit freedoms? If everyone makes private agreements and forgets the people of Israel--will you call that the rule of law? Will you say that we, the State of Israel, are still a democracy?"

Tunik did not ignore the fact that, in emergencies, the need to impose limitations on the freedom of broadcasting might arise. But for this purpose there exists Section 47 of the Broadcasting Authority Law which states: "The government has the right, whenever it deems it necessary due to military or emergency necessities, to decree the annulment or limitation of the Broadcasting Authority's rights ... for a period of not more than thirty days ... the Knesset Defence and Foreign Affairs Committee is permitted, according to the Cabinet's proposal, to extend the validity of this decree for a period which will be set." There exists, then, a special arrangement in the law which enables the political echelon to supervise and limit transmissions during times of emergency. But those legal limitations are subject to several conditions: a public decree by the Cabinet, a time limit for the validity of those limitations, and the need for the approval by the Defence and Foreign Affairs Committee in order to extend their validity. These conditions ensure that the Cabinet will not arbitrarily limit the Broadcasting Authority's independence, which is defined by law. Yet, in the Spokesmanship Arrangement the Authority has circumvented the legal arrangement and has voluntarily limited its own freedom. The fact that the Broadcasting Authority, whose freedom is protected by law, has subordinated itself to the IDF spokesman is, according to Tunik, "beyond all boundaries of logic." And indeed, urged by the State Comptroller, the Knesset Comptrol Committee determined that the Spokesmanship Arrangement is not consistent with the independence that the legislature gave to the Broadcasting Authority. The Authority had no legal right to sign the Arrangement and therefore the agreement is forthwith null and void. The committee's conclusion was also ratified by the full Knesset plenary.

REPERCUSSIONS FROM THE PAST

A similar agreement was signed before the establishment of Israel Television. Arnon Zuckerman, the former Director-General of Israel Television, says that there were two main reasons for those agreements:

- A) According to the agreement, Broadcasting Authority correspondents were mobilized into the IDF, and thus benefitted from the comprehensive insurance which protects all soldiers.
- B) According to the agreement, the freedom of movement of television crews in military areas was extended.

Military authorities did not fear undesirable reports, because they could prevent any transmissions they did not like. Zuckerman says that a previous agreement had been cancelled in 1974, due to differences with then Defense Minister, Moshe Dayan when IDF forces withdrew from the Suez Canal in accordance with the Separation of Forces Agreement. Photographs of the withdrawal were published in the press, and television reportage about it was also prepared. The IDF spokesman demanded that Israel Television not broadcast its report, but his demand was overruled by Zuckerman and the reportage was transmitted. Dayan said that Zuckerman's decision constituted an infringement of the Spokesmanship Agreement and that he had agreed to free movement of television crews in the area on the condition that the IDF be given a veto concerning publication. Since Zuckerman refused, the Spokesmanship Agreement was annulled and not reinstated until 1980.

Zuckerman is opposed to a spokesperson agreement, and thinks that supervision by military censorship ought to be sufficient. He fears that a spokesperson agreement will open the gate for political censorship as well, and to the limiting of transmissions due to arbitrary considerations by the Defense Minister. It is true that sometimes it is pleasant and convenient for the media to embrace the establishment, but they would be well advised to beware of a bear's hug.

The Attorney General, Professor Yitzhak Zamir, is now looking into this issue in order to regularize relations between the Broadcasting Authority and the IDF spokesman in times of emergency. This is not an easy job, because a golden mean has to be found between just, but contradictory, needs. The new arrangement will have to insure that the Wolf (State Security) will be satisfied, and that at the same time the Lamb (Freedom of Publication) will remain intact.

II. CENSORSHIP IN WAR

By Brigadier-General Yitzhak Shani

Foundations for the censorship system. Peacetime censorship. Censorship in war. A positive definition of censorship.

To be a democracy, as is the State of Israel, and to require censorship are often conflicting principles. In response to this challenge Israel has developed a unique censorship system which reflects a delicate balance of the issues involved.

FOUNDATIONS FOR THE CENSORSHIP SYSTEM

Israeli censorship is legally based on British emergency defense regulations implemented in 1945. According to these regulations, the censor may, by order, prohibit generally or especially the publishing of matter which, in his opinion, will cause harm to the defense of Israel, or to the public safety, or to public order.

In addition to this legal base and parallel to it, there exists an agreement between the IDF General Staff and the Committee of Editors of the Hebrew daily newspapers regarding matters of censorship. According to this agreement, the only purpose of censorship in Israel is to prevent the publication of information on security matters which might prove useful to the enemy or be harmful to the defense of the State.

PEACETIME CENSORSHIP

Thus, censorship in Israel is based on coordination between the press, the military authorities, and the censor. This does not mean that every decision made by the censor is accepted by the press. In case of a disagreement, the newspaper editor has the alternative of lodging a complaint against the censor through the proper channels according to the terms of the agreement. The censor can take similar action against the newspaper. Since 1949, when the agreement was first signed, not more than 180 such complaints have been filed (not more than five a year).

In fact, the press is quite free and is allowed to publish almost anything except for those items it has agreed to withhold or has been forced to withhold because of a few irrevocable decisions by the censor.

There are seventy issues or subjects that must be submitted to the censor for pre-publication examination. It could be said that these subjects define the security of the State. They include:

Planning of military operations
Alert situations
Mobilization
Forces deployment
Movements of units
Army morale (such as defamation of the IDF, rumors that might harm the army's morale)
Intelligence information about the enemy (forces, unit movements, arms, and war equipment)

Please note that those subjects are not automatically disallowed by the censor; but they must be submitted for review prior to publication.

CENSORSHIP IN WAR

Our so-called daily "peacetime" censorship continues to operate even in times of military tension or wartime intensity. During the recent "Peace for the Galilee" War the censor's operations were based in the permanent Tel Aviv and Jerusalem offices. In addition, crews of censors were sent to the four studios from which the foreign TV networks broadcast their material via satellite.

The censorship law and the 1949 agreement do not prevent correspondents from reaching the battlefield and obtaining any information they can. Only after the correspondants have gathered their material must they seek the censor's approval. The censor did not and does not intervene in the public debate regarding the pros and cons of the war.

In my opinion, in the last war the main achievements of censorship were:

- ** The prevention of publishing the fact that Israel had mobilized its reserve forces (before the war started).
- ** The prevention of publication of the movements of the forces (armor and artillery) to the north -- a maneuver that took place in the open along the main roads.
- ** The prevention of publishing the intentions of the IDF and war decisions made by the government.

After the formal announcement of the war, we prevented the publication of the exact size of the operation and the participating units and forces, detailed plans, and places of penetration and advance.

A POSITIVE DEFINITION OF CENSORSHIP

I have given you a basic idea about the framework of our censorship system. Of course, the subject is much more complicated and wide-ranging than the space permitted here can cover. In spite of the fact that my profession is censorship, that is the prevention of publication under certain circumstances,

my opinion is that the press in wartime is essential and must give the public comprehensive, reliable, real, factual information, and in good time. Censorship complements such behavior by adjusting itself to the time limits dictated by the press, to enable the press to accomplish its mission. Thus, those truly damaging items that were censored on quite a few occasions were eventually approved after sensitive circumstances changed. Censorship usually does not act against journalists, or against newspapers, or against the public wish to know. Its action is directed at preventing information that could prove harmful to the security of the State from reaching the enemy.

Yisrael Landres is Editor of *Davar's* weekly supplement. An earlier version of this article appeared in *Davar* in February 1983.

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