

RESPECTING FREEDOM OF THE PRESS AT THE UNITED NATIONS

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In the modern world, freedom of the press is under attack as it never has been before. Crank tinpot dictators, so absurd that nobody would ever normally take them seriously,



have become dangerous because they dominate the media ruthlessly, using the might of the state to suppress freedom of expression. Tyrants who act in ways so repellent to universally held principles of media freedom and liberty of expression are rightly condemned and ostracised for their disregard of one of the most shining emergent principles of the last two hundred years: a free and open media, that can hold people of power to account.

Authoritarian efforts to control the free flow of media information are to be uncompromisingly condemned.

The United Nations has always respected freedom of the press, serving as a bulwark of this universal value held equally in high regard amongst all civilised nations. Article 19 of the UN's Universal Declaration of Human Rights, one of the founding instruments of the institution, provides that "*[e]veryone 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*". In other words, free media is a fundamental tenet of the United Nations Organisation and all of its constituent member states. It has always been so.

For this reason, the United Nations Organisation has consistently supported measures designed to decriminalise freedom of expression. Acts of journalism, or other expressions of the fundamental human right to free speech, cannot possibly be sanctioned by the criminal law and the coercive forces of the state. Were such penalties to be applied to legitimate expressions of journalists' views, the chilling effect of the use of state force would surely render the human right to free speech entirely nugatory.



Accordingly it was with some bemusement, if not sadness and anger, that I recently found myself assisting a journalist in United Nations' second home of Geneva, in Switzerland, in a criminal complaint filed by a UN specialised agency, the World Intellectual Property Organization, and its ignominious Director-General Francis Gurry. The journalist was subject to criminal investigation for reporting allegations, widely spread across the media, that the Director-General in question is corrupt. Indeed these were not just allegations: a United Nations Office for Internal Oversight Services report had confirmed their veracity in substantial part. Nevertheless reporting upon affirmed conclusions of corruption now appears to be a matter for criminal investigation by the Geneva law enforcement authorities.

I would like to mention a few observations about the case to which I refer. Firstly, the UN agency and its Director General were complainants or alleged aggrieved parties. I have never in all my career heard of both an international organisation and its Chief Executive Officer filing a criminal complaint for defamation in respect of reports of accusations of corruption, before domestic authorities where it is obviously in the public interest be aired. The very notion of a criminal complaint for defamation being an anathema to the principles and values underlying the United Nations, it is unthinkable that a UN agency itself, and its Director-General, initiate a domestic legal procedure so abhorrent to UN values.

Secondly, the criminal complaint was palpable nonsense in its content. Nevertheless the Swiss Ambassador had lent his name to it, himself personally sending it to the Geneva Prosecutor. It is not clear why the Swiss Ambassador properly has a role serving as a means of conveyance of criminal litigation documents to anyone. He is intended to be a diplomat, working at the federal level of the Swiss government: not a local law enforcement official in the city of Geneva.

Thirdly, this is one of the fastest-processed criminal complaints I have ever seen in my career as a lawyer. Within barely two months of the criminal complaint being filed regarding the accusations of corruption against Mr Gurry, the journalist had received a warrant compelling him to attend a high-security Geneva police station used to detain the most dangerous criminals in the city, replete with burly and armed police officers. He was thereupon locked in a secure part of the police station, placed upon a plastic seat without refreshments, not informed of his right to consular assistance in the event of detention, asked a series of intrusive questions about his personal affairs, and invited to give extensive evidence under deposition justifying the content of his published article lest he be found guilty of criminal defamation, which if wilful can carry a sentence of imprisonment of up to three years.

Why was this criminal investigation initiated so quickly? Typically it may take six months to one year or more for a criminal investigation to be pursued in earnest before the Geneva Prosecutor's Office, even for vastly more serious offences. One can only speculate as to the origin of the haste, just as one can only speculate as to why the Swiss Ambassador participated so cosily in its pursuit. But one possible inference might be that Mr Gurry has close relations with the Swiss Ambassador, who might have used all his will to ensure that these unpleasant events of criminal procedure took place against the journalist in question as quickly as possible and with a view to intimidate him, so that the journalist would not dare criticise Mr Gurry again. That might be why such a high-security police station and facility were likewise used for the journalist's detention: raw intimidation.

Were that hypothesis to be right, the Geneva system of criminal justice might not emerge appearing in an entirely positive light.

The matter is vile. This was a local journalist. The allegations of corruption levelled against Mr Gurry are all over the internet. A number of the world's biggest international broadcasters have reported them at length. Mr Gurry has not sought to pursue those media outlets with criminal charges. Presumably he would not dare. One might be tempted to infer that he has no guts. Instead he pursued a small local journalist of comparatively modest means, who he might imagine that he could crush. If those were his motives, then he is despicable and arguably unfit to hold any international public office.

This is not the first time that accusations have been raised to the effect that Mr Gurry has misused the Geneva criminal justice system, politicised because its prosecutors are political nominees with broad powers subject only to the most limited of judicial constraint, to perpetrate his own bizarre goals. After an anonymous memorandum accusing Mr Gurry of corruption was circulated in the halls of WIPO, it is alleged that Mr Gurry unlawfully engaged the Geneva Police to seize DNA samples of certain persons he imagined might be behind the memorandum, in order to establish whether they were participants in its authorship. All of this, it has been asserted, took place without apparent regard to the principles of inviolability of UN premises.

Criminal investigations for defamation are virtually unheard of in Switzerland. It has long been thought that these provisions of the Swiss Criminal Code are close to obsolete. It might be thought extraordinary that Mr Gurry, through the Swiss Ambassador (the same individual in the DNA case as now), is almost uniquely able to ensure the exceptionally swift investigation of such complaints in respect of legislative provisions commonly regarded as close to dead.

There are a number of profound concerns that might arise from the foregoing narrative. Firstly, if Mr Gurry has orchestrated repression of the free media through use of the Geneva criminal justice system, then what does that reveal about his possible personal qualities, his professional sense of balance as opposed to vindictiveness, and his suitability to serve as the leader of a major and important UN agency? Secondly, why did the Geneva Prosecutor's office go along with so undignified a scheme, and what improper pressure if any was brought to bear upon them through the annals of the relevant Swiss Ambassador or otherwise? Thirdly, if the Swiss Ambassador was a participant in a scheme of misconduct, then why would he do such a thing, save in circumstances in which one might speculate as to why he and Mr Gurry harboured such close relations?

This is not the first time that Mr Gurry, or the organisation he runs, have used legal means with a view to silencing critical media. Perhaps this should not be regarded as surprising. References to Mr Gurry's alleged corruption are so common in public sources that one might be forgiven for imaging that Mr Gurry's name is nothing more than a linguistic synonym for corrupt behaviour. A simple Google search of Francis Gurry and the word "corruption" delivers some 96,000 results. His name is so dirtied in public media that one might speculate as to whether he achieves some moderate sense of solace or revenge in persecuting individual journalists through what might, upon the foregoing narrative, be inferred as the potentially improper exercise of influence over the criminal justice process. In any event, his name is mud. Actions like this will not rub the mud off. The mud will stick. It will stick to the end of his days.

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