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SUB-COMMISSION ON FREEDOM OF INFORMATION AND OF THE PRESS

Third Session

SUMMARY RECORD OF THE FIFTY-NINTH MEETING

Held at Lake Success, New York,
on Wednesday, 8 June 1949, at 2.30 p.m.

CONTENTS: Consideration of item 4 of the agenda:
draft resolution on communications submitted
by Mr. Azmi, Mr. Chang and Mr. Gandhi
(E/CN.4/Sub.1/24, E/CN.4/Sub.1/85,
E/CN.4/Sub.1/86) (continued)

<u>Chairman:</u>	Mr. LOPEZ	Philippines
<u>Rapporteur:</u>	Mr. FONTAINA	Uruguay
<u>Members:</u>	Mr. AZKOUL	Lebanon
	Mr. AZMI	Egypt
	Mr. BINDER	United States of America
	Mr. CHANG	China
	Mr. DEDIJER	Yugoslavia
	Mr. GANDHI	India
	Mr. GERAUD	France
	Mr. SILVA CARVALLO	Chile
	Mr. WILLIAMS	United Kingdom
	Mr. ZONOV	Union of Soviet Socialist Republics

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Secretariat:

Mr. HOGAN

Secretary of the Sub-Commission

CONSIDERATION OF ITEM 4 OF THE AGENDA: DRAFT RESOLUTION ON COMMUNICATIONS
SUBMITTED BY MR. AZMI, MR. CHANG AND MR. GANDHI (E/CN.4/Sub.1/84,
E/CN.4/Sub.1/85, E/CN.4/Sub.1/86) (discussion continued)

Sub-paragraph (a) (discussion continued)

The CHAIRMAN requested the Sub-Commission to consider how it
wished to deal with complaints of Governments: whether merely to take
note of them, to discuss them in open or closed meetings, or to take
further action upon them.

Mr. AZMI recalled that the Sub-Commission could not take action.
By its terms of reference it was authorized only to study problems in the
field of its competence and to make reports and recommendations to the
Economic and Social Council. It could therefore only report that it had
studied the complaints, and make recommendations concerning them.

Mr. WILLIAMS considered that making recommendations was taking
action. The Sub-Commission was instructed to consider the adequacy of
news available in various countries and barriers to the free flow of
information. It could work more effectively if it studied complaints,
as well as other evidence of such barriers.

Mr. AZKOUL pointed out that the text, as it was worded, provided
only for communications from legally constituted enterprises or associations.
Those from individuals or organizations not legally constituted would not
be received. They could be referred to the Commission on Human Rights.
In regard to treatment of those from legally constituted organizations,
there were two problems which he wished to call to the attention of the
Sub-Commission. One of those problems concerned the publicity to be given
to complaints. If they were discussed in open meetings they would be given
publicity. The Commission on Human Rights had, in the past, prepared a
confidential list of complaints. The Secretary-General's memorandum on the

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subject had recommended that the Commission on Human Rights should divulge the names of the authors and the contents of the complaints. One reason that they had been kept secret was that Member Governments of the United Nations would not wish accusations against them -- whether true or false -- to be publicly discussed. Many of such complaints would be false, would be inspired by resentment or revenge, and would be submitted by malcontents in various countries. The United Nations organs should not give publicity to them. The Sub-Commission would not be able to verify the truth or falsity of such complaints, nor to take action on them, and therefore nothing would be gained by discussing them.

Mr. Azkoul pointed out the obvious contradiction of making public in the Sub-Commission what the Commission on Human Rights wished to keep secret.

The discussion of complaints against specific countries would put the members of the Sub-Commission, who were also representatives of their countries, in a very embarrassing position. They were experts chosen for their personal qualifications in the field of information. They must keep in mind the interests of the United Nations. They were also, however, nationals of their countries and were serving with the approval of their Governments. Confronted by accusations against their own countries, they would find themselves in a difficult position. They must consider the problems objectively. They would know in advance how the decisions of the Sub-Commission would be received by their Governments. They would not wish to take decisions which they knew would not be accepted by those Governments. He therefore recommended that the Sub-Commission should not discuss and act upon complaints.

It would, however, be advisable for the members of the Sub-Commission to take note of the complaints. Knowledge of them would aid the Sub-Commission in keeping informed of the world situation in the field of freedom of information, and in making recommendations to facilitate the free flow of information.

If complaints were discussed in public, political factors would enter into consideration of them. The Sub-Commission should avoid that. Its agenda was an extensive one and it should confine itself to the problems in its field of competence.

The Commission on Human Rights had discussed the reception of complaints at that morning's meeting and could not decide to accept those from individuals and groups in the field of information. If the Commission could not act on such complaints, the Sub-Commission should not try to do so.

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By its terms of reference it was to make reports and recommendations for the purpose of implementing the conventions and improving conditions in the field of information. Such recommendations should be general, however, and not directed against specific countries. They should relate to problems affecting the whole world.

The subject of the treatment of complaints had been discussed at the Conference on Freedom of Information in Geneva in connexion with the drafting of the Sub-Commission's terms of reference. A USSR amendment to delete the words "and complaints" from the phrase "communications and complaints" in the draft had been adopted by 23 votes to none, with one abstention; thus the Conference had considered the advisability of dealing with complaints and had decided against doing so.

Mr. Azkoul therefore proposed that the Sub-Commission should merely take note of complaints in order to keep informed of what was going on in the world, and should not take action on them.

Mr. BINDER thought that the members of the Conference, in taking a decision on the matter, had been studying the problem from their point of view as representatives of their various countries. Such was not the case in the Sub-Commission. It should decide on the reception and disposition of complaints from individuals, as well as those from groups. Mr. Binder was of the opinion that both would be useful to the Sub-Commission. He understood Mr. Azkoul's idea that publicity given to the complaints might prove troublesome. That matter should be considered under another item of the agenda. What should be decided upon at that point was the reception of complaints. He did not wish to state or imply in the resolution that the Sub-Commission refused to examine complaints from any responsible person. It might be advisable to say that the Sub-Commission would receive complaints "whenever it deemed advisable". He believed that, if the matter were voted upon, it would be found that the majority of the Sub-Commission was in favour of receiving complaints. He proposed that a vote should be taken.

Mr. SILVA CARVALLO, in reply to Mr. Azkoul, recalled that, in accordance with article 19 of the Universal Declaration of Human Rights, everyone had the right "to hold opinions without interference and to seek, receive and impart information and ideas by any means and regardless of frontiers". Any Member Governments that followed policies inconsistent with that article were under a moral obligation to alter those policies to conform with those of the United Nations. The interest of the United Nations therefore superseded those of the Member Governments.

/Mr. GERAUD

Mr. CERAUD remarked that the Sub-Commission should decide on the treatment that should be given to the complaints which reached it. He suggested that sub-paragraph (a) should be amended by the insertion of the words "or of any person competent in the field of information" after the words "enterprise or association".

Mr. WILLIAMS, in reply to Mr. Azkoul, stated that the fact that the experts of the Sub-Commission were nominated and elected by Governments did not restrict their independence. They would not be placed in a position of divided loyalty. It was understood that they would consider impartially the problems discussed. Sitting as independent experts on the Sub-Commission, their greatest loyalty was to the principles of democracy and freedom.

Mr. GANDHI felt that Mr. Azkoul's fear of repercussions from the consideration of complaints would prove to be groundless. The Sub-Commission would probably find that it could answer all the complaints reaching it, or handle them effectively in such a way as to diminish rather than increase bitterness in the world. He thought that the word "communications" in the draft covered all complaints and that the word "complaints" need not be used at all.

Moreover, if the word "complaints" were used, he feared that the Secretariat might not always be able to determine which of the communications referred to the Sub-Commission constituted complaints. Some complaints might be included in communications of a more general nature, which should be referred to the Sub-Commission. He, therefore, proposed that the word "communications" should be interpreted to cover all complaints.

Mr. AZKOUL wished to clarify a few of the points he had made in his preceding statements, which had been misunderstood. In reply to Mr. Binder, he wished to say that he was not confusing his capacities as expert and as a representative of his country, and that he had always considered impartially the problems under discussion. What he had intended to point out was that, as representatives of their countries, members knew in advance how the decisions of the Sub-Commission would be received and, as a consequence, they wished to avoid wasting the time of the Sub-Commission by taking decisions which they knew would be unacceptable to their Governments. He had not meant that they would be limited in their activity by that fact. In reply to Mr. Silva Carvalho, he said that he

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was more concerned about the methods to be followed in the treatment of complaints than about the fact that they would be publicized. If the Sub-Commission were authorized to take definite measures against the specific countries which might be the objects of the complaints, he would advocate full and open discussion of complaints. In accordance with the instructions of the Economic and Social Council, the Commission on Human Rights itself was not empowered to act on such complaints. If the parent body of the Sub-Commission did not possess that power, certainly the Sub-Commission could not take action. He objected to discussions of complaints on the ground that they could lead to no action. Moreover, the Sub-Commission should not make public what the Commission on Human Rights wished to keep secret. He did not oppose receiving complaints; they would aid the Sub-Commission in obtaining a general view of the world situation in the field of action. He did not oppose discussing them, if the Sub-Commission considered it useful. He did, however, object to making public the discussion of complaints the veracity of which could not be verified by the Sub-Commission. He did not mean to suggest that complaints should be ignored or filed away and forgotten. He recommended that they should be referred to the Commission on Human Rights.

Mr. AZMI thanked Mr. Azkoul for his statement clarifying his position. It was clear that he did not oppose receiving and discussing complaints, or making recommendations concerning them, but that the publicity which would be given to them by discussion in open meetings caused him some uneasiness. It was permissible for the Sub-Commission to hold closed meetings. Mr. Azmi, therefore, proposed that the words "or closed" be inserted after the word "open" in sub-paragraph (a) of the last half of the draft resolution.

Mr. FONTAINA thought that a solution of the problem under consideration could be arrived at by establishing a small permanent sub-committee of three members which would sift communications referred to the Sub-Commission. It could consider the validity of complaints and after research, if necessary, inform the Sub-Commission as to the nature and status of the authors of the complaints. Mr. Geraud had proposed the establishment of some such working group; as he suggested, it could keep the Sub-Commission informed of problems in the field of information which might arise between sessions of the Sub-Commission. It could also recommend to the Sub-Commission, if necessary, and only as an exceptional measure, the holding of closed meetings to consider the complaints.

He favoured the omission of the word "complaints" in the draft and the use of the word "communications" to cover complaints.

/Mr. ZANOV

Mr. ZONOV maintained the view he had expressed at the previous meeting that the Sub-Commission was not competent to receive or discuss complaints. There was no mention of any such things in its terms of reference, and the Sub-Commission had no right to set itself up as a judge in any disputes which might arise between a Government and one of its nationals ^{or} an organization operating within its territory. He therefore strongly urged members to stop discussing a question which was outside the Sub-Commission's competence and to devote their attention to the many other important problems on the agenda.

The CHAIRMAN called for a vote on the question whether the Sub-Commission wished to be informed of communications containing complaints. If that were decided in the affirmative, a second vote would be taken on whether the Sub-Commission wished to discuss such communications and make recommendations about them.

Mr. DEDIJER recalled occasions in other bodies when a vote taken on a question of principle had afterwards led to great confusion. He therefore thought it would be best to vote on the actual text of the draft resolution.

Mr. AZMI agreed that it was best to vote on definite texts. Since the authors of the draft resolution had explained that the word "communications" included complaints, the vote on the actual text would automatically decide the question of principle. He therefore proposed that the voting should be on the text of the draft resolution contained in document E/CN.4/Sub.1/84 and the amendments thereto.

It was so agreed.

In reply to a question by Mr. GANDHI as to why there was no mention of communications from Governments or semi-governmental organizations, Mr. HOGAN (Secretary of the Sub-Commission) explained that communications from Governments would automatically be reproduced in full and circulated. Any semi-governmental organization would be covered by the existing text of paragraph (a).

Mr. GANDHI accepted the explanation given by the Secretary.

In order to take into account the point raised earlier by Mr. Geraud, he suggested that the first of the amendments submitted by Mr. Williams (E/CN.4/Sub.1/85) should be altered to read "or any other legally

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constituted body or individual with special competence in the field of public opinion". In that way it would be possible to receive communications from individuals as well as from organizations.

After some discussion on drafting, Mr. HOGAN (Secretary of the Sub-Commission) said that the Secretariat would have to treat all communications with equal consideration and it could not possibly accept the responsibility of determining whether the authors of the communications were responsible and competent individuals or not.

All communications connected with freedom of information would be referred to the Commission on Human Rights as well as to the Sub-Commission, and neither body had the power to do more than make recommendations. It would be impossible for them to decide whether or not the complaints were justified because they were not empowered to carry out investigations on the spot.

There was no mention of receiving communications from individuals in the Sub-Commission's terms of reference, but the members were naturally entitled to interpret their terms of reference as they thought fit. It would be for the Economic and Social Council, in the last resort, to decide the question.

Mr. AZKOUL agreed with Mr. Hogan that the Secretariat should not be asked to decide which individuals were responsible and which were not. If the Sub-Commission wished to include the word "individuals" in the text it should do so without any qualifying adjective. In fact the best way might be to state quite simply that the Sub-Commission was prepared to receive communications from any source.

Mr. SILVA CARVALLO agreed that the word "individuals" should not be qualified in any way. Complaints should be judged purely on the criterion of whether or not they were justified and not on the basis of the qualifications of the author.

After some further discussion, Mr. WILLIAMS proposed that a semicolon should be placed after the word "association" and that the final words should be replaced by the following: "any member of a professional organization in the field of information or any other legally constituted body with competence in the field of public opinion". He submitted that text as a substitute for his original amendment to paragraph (a).

/ The amendment

The amendment submitted by Mr. Williams was adopted by 9 votes to 2, with one abstention.

Paragraph (a), as amended, was adopted by 10 votes to 2.

The CHAIRMAN called for a vote on paragraph (b) of the draft resolution.

Mr. AZKOUL said that, since the sources from which communications could be received had been enlarged to include individuals, the wording of paragraph (b) should be altered so as to provide protection for individuals who might be subjected to reprisals if their names were divulged. It was not sufficient to state that the names and addresses of authors of communications would be made known unless they had indicated that they wished their names to remain confidential. Some people might not realize that there was any such provision and might omit to state specifically that they wished their names to remain confidential. He felt sure that the Sub-Commission would eventually have to adopt the procedure followed by the Commission on Human Rights and compile two lists, one including all complaints without any names and addresses of authors and the other including any communications which did not contain complaints with the names and addresses of the authors. Until that method was adopted, however, it would be best to re-word paragraph (b) to state that the names and addresses of authors would not be divulged unless they had specifically stated that they did not desire their names to remain confidential.

Mr. WILLIAMS pointed out that if the wording suggested by Mr. Azkoul were adopted the names and addresses of authors would remain confidential in nearly every case, since people would not think of including a specific statement to say that their names could be divulged. He would accept Mr. Azkoul's suggestion as far as individuals were concerned but he felt that, in the case of organizations, the original wording would be preferable.

Mr. CHANG said that a knowledge of the identity of the author might be very useful to the Sub-Commission in assessing the value of the complaint. It would therefore be best to reduce the number of anonymous complaints to the minimum.

After some discussion on drafting, Mr. GANDHI finally proposed the following wording:

"(b) to include in such a list the names and addresses of the authors of communications provided that, in the case of individuals, they have indicated that they wish their names to be divulged."

The above text for paragraph (b) was adopted by 7 votes to 3, with 2 abstentions.

Paragraph (c) of the draft resolution as set forth in document E/CN.4/Sub.1/84 was adopted by 10 votes to 1, with 1 abstention.

The CHAIRMAN called for a vote on paragraph (d).

Mr. AZKOUL proposed the addition of the words "subject to the provisions of paragraph (b)" at the end of the paragraph.

It was so agreed.

Paragraph (d), as amended, was adopted by 9 votes to none, with 2 abstentions.

The CHAIRMAN asked if there was any further discussion on the suggestions for a new paragraph (e) submitted by Mr. Williams (E/CN.4/Sub.1/85) and Mr. Azkoul (E/CN.4/Sub.1/86).

Mr. WILLIAMS accepted the following redraft of his amendment, proposed by Mr. GANDHI:

"(e) wherever such communications contain specific criticisms or complaints against Governments in the field of freedom of information, to inform the Governments concerned of these complaints and to request them to provide such information as they desire, both on the subject matter of the communication and on the national status of the body making it."

Mr. DEDIJER said that he was opposed to the whole draft resolution because, in his opinion, it went beyond the Sub-Commission's terms of reference. He was opposed more particularly to the amendment submitted by Mr. Williams, because it specifically mentioned complaints and seemed to be based on the assumption that Governments were the only possible sources of restrictions on freedom of information. It did not take into account restrictions imposed by monopolies.

/ Mr. WILLIAMS

Mr. WILLIAMS said that he had not meant to infer that restrictions on freedom of information could come only from Governments. He had simply wished to make it clear that when a complaint was made against a Government, the Sub-Commission should, as a matter of courtesy, inform the Government concerned of the complaint and give it the opportunity to reply. The Sub-Commission need not feel any such obligations of courtesy where complaints against monopolies were concerned.

Mr. FONTAINA thought that the last words of the amendment should be deleted. The question of "national status" should not be included in the resolution because a complaint might be made by an organization operating in one country against the Government of another country. If enquiries were made to the Government of the country in which the organization was operating, the whole issue might be turned into a dispute between Governments, a result which would be most undesirable.

Mr. WILLIAMS explained that the only reason for the inclusion of the final words in his amendment had been to make it possible to find out something about the author of the complaint. In order to take Mr. Fontaina's point into account, he agreed to alter the last words of his amendment to read: "...both on the subject matter and the author of the communication".

He also accepted an amendment suggested by Mr. AZKOUL, to the effect that the words "subject to the provisions of paragraph (b)" should be included in the new paragraph (e).

The new paragraph (e), as amended, was adopted by 10 votes to 2.

The CHAIRMAN called for a vote on paragraph (a) of the section following the word "DECIDES".

Mr. GANDHI took up the suggestion made earlier by Mr. Azmi and proposed that the first part of paragraph (a) should be amended to read: "to consider the list of such communications in open or closed meeting as the Sub-Commission may decide from time to time...".

Mr. AZKOUL thought that all complaints should be discussed in closed meetings and any other communications in open meetings. If it were left for the Sub-Commission to decide in each case whether the meeting

/ should be

should be open or closed, there might well be accusations of discrimination, especially if the Government concerned did not agree with the Sub-Commission's decision. He therefore proposed that a new paragraph should be inserted before paragraph (a) reading: "to consider the list of the communications referred to in paragraph (e) with the replies of Governments, if any, in a private meeting". The original paragraph (a) would then be called (b) and would read: "to consider the list of other communications in open meeting...".

He reminded those who favoured holding open meetings that, according to the procedure laid down by the Economic and Social Council, any State which was in any way concerned with the question under discussion would have to be invited to be represented during the discussion, if it was held in open meeting. It would therefore be far better to decide from the outset that all complaints would be discussed in closed meeting.

Mr. GANDHI and Mr. BINDER still thought it would be best to leave it to the Sub-Commission to decide on each occasion whether the meeting should be open or closed.

The amendment submitted by Mr. Azkoul was rejected by 8 votes to one, with 2 abstentions.

The original paragraph (a), as amended by Mr. Gandhi, was adopted by 8 votes to 3, with one abstention.

Paragraph (b) under the heading "DECIDES" was adopted by 10 votes to one, with one abstention.

The CHAIRMAN called for a vote on the draft resolution as a whole, as it had been amended. The text read as follows:

"The Sub-Commission on Freedom of Information and of the Press
REQUESTS the Secretary-General

"(a) to compile and distribute monthly to members of the Sub-Commission a list containing a brief summary of each communication received from any legally constituted national or international press, information, broadcasting, or newsreel enterprise or association; any member of a professional organization in the field of information or any legally constituted body with competence in the field of public opinion, relating to principles and practices in the field of information;

/ (b) to include

- "(b) to include in such a list the names and addresses of the authors of communications provided that, in the case of individuals, they have indicated that they wish their names to be divulged;
- "(c) to inform the authors of communications that these have been received and will be brought to the attention of the Sub-Commission;
- "(d) to make available to members of the Sub-Commission, on request, the full texts of such communications, subject to the provisions of paragraph (b) above; and
- "(e) wherever such communications contain specific criticisms or complaints against Governments in the field of freedom of information, to inform the Governments concerned, subject to the provisions of paragraph (b), of these complaints and to request them to provide such information as they desire to give both on the subject matter and the author of the communication; and

"DECIDES

- "(a) to consider the list of such communications in open or closed meeting as the Sub-Commission may decide, in order to determine which communications warrant discussion or any further action; and
- "(b) to follow, in respect of any communications brought to the attention of the Commission on Human Rights and referred to the Sub-Commission by that Commission, the procedure established by the Economic and Social Council for such communications."

The draft resolution as a whole was adopted by 9 votes to 2, with one abstention.

Mr. AZKOUL explained that he had abstained from voting on the resolution as a whole because he disapproved of the text that had been adopted for paragraph (a) under the word "DECIDES".

The CHAIRMAN announced that the proposal made by Mr. Fontaina in the course of the meeting would be discussed with Mr. Geraud's proposal (E/CN.4/Sub.1/81) at the beginning of the following meeting.

The meeting rose at 6.05 p.m.

