

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/CN.4/Sub.1/SR.72*

17 May 1950

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON FREEDOM OF INFORMATION
AND OF THE PRESS

Fourth Session

SUMMARY RECORD OF THE SEVENTY-SECOND MEETING

Held at Hotel Parque, Montevideo,
on Wednesday, 17 May 1950, at 10 a.m.

CONTENTS:

The adequacy of the news available to the peoples
of the world and the obstacles to the free flow
of information to them (E/CN.4/Sub.1/106) (continued):

Draft resolution concerning the limitation of
freedom of information in a state of emergency
(E/CN.4/Sub.1/116) proposed by Mr. Azkoul;

Draft of an international code of ethics
(E/CN.4/Sub.1/114)

<u>Chairman:</u>	Mr. FONTAINA	(Uruguay)
<u>Vice-Chairman:</u>	Mr. AZMI	(Egypt)
<u>Rapporteur:</u>	Mr. JORDAN	(United Kingdom of Great Britain and Northern Ireland)

RECEIVED

JUL 21 1950

UNITED NATIONS Document has been reproduced in New York from the provisional
ARCHEIVED issued at Montevideo.

/Members;
E/CN.4/Sub.1/SR.72

Members:

Mr. AQUINO	(Philippines)
Mr. AZLOUL	(Lebanon)
Mr. BINDER	(United States of America)
Mr. P. H. CHANG	(China)
Mr. DEDIJER	(Yugoslavia)
Mr. GHANDI	(India)
Mr. GERAUD	(France)
Mr. SILVA CARVALLO	(Chile)

Representative of a specialized agency:

Mr. FAER	United Nations Educational Scientific and Cultural Organization (UNESCO)
----------	--

Representatives of a non-governmental organization:

Category A:

Miss CASTRO)	World Federation of United
Miss Languia)	Nations Associations (WFUNA)

Secretariat:

Mr. HUMPHREY	Representative of the Secretary- General
Mr. HOGAN	Secretary of the Sub-Commission

THE ADEQUACY OF THE NEWS AVAILABLE TO THE PEOPLES OF THE WORLD AND THE
OBSTACLES TO THE FREE FLOW OF INFORMATION TO THEM (E/CN.4/Sub.1/106) (continued,
Draft resolution concerning the limitation of freedom of information in a state
of emergency (E/CN.4/Sub.1/116) proposed by Mr. Azkoul

The CHAIRMAN requested Mr. Azkoul to introduce his draft
resolution (E/CN.4/Sub.1/116).

Mr. AZKOUL observed that conventions dealing with human rights
and freedom of information generally contained a clause specifying that all
the rights granted in them could be abrogated by the State in case of war,
danger to national security or other emergency. The public had apparently
come to accept the idea that during such an emergency the State should be
given unlimited powers in order to defend its very existence. Members of
the Sub-Commission, however, as representatives of the information media,
could not accept such a premise; they must declare that a state of emergency
should not be used as a pretext for ruthless censorship and that no
Government should limit freedom of information beyond the strict exigencies
of the situation.

The state of the world today clearly called for such an action. He
cited as an example the case of a country - - which he would not name --
where the Government had taken advantage of the existing state of emergency
to impose the strictest censorship on matters which, at first sight,
seemed only very remotely concerned with the reasons for which the state
of emergency had been declared. He did not know how much those

/restrictions

restrictions were justified by the situation, but he did know that the Press had protested against that state of affairs -- but to no avail -- since it had possessed no criterion for judging which measures had been dictated by the situation and which had gone beyond it. The object of the draft resolution was to provide the Press with just such a criterion, and to give it and the public something approaching a basis for their protests should such protests be justified.

He recognized that the criterion was still a vague one, as States could always claim that any measures they had taken had been justified by the situation; but the adoption of his draft resolution and, he hoped, its subsequent approval by the General Assembly would at least bring home to the Press and to the people the idea that a state of emergency did not justify arbitrary derogation of their rights and freedoms and would enable them to discuss the decisions of the State with greater authority.

His draft resolution was only a first step, but it was a step in the right direction, and he hoped that the Sub-Commission would adopt it.

The CHAIRMAN, speaking in his personal capacity, remarked that the United Nations could not go very far in that direction without being accused of intervening in the domestic affairs of States.

/He was

He was prepared, however, to support Mr. Azkoul's draft resolution, since it provided a basis for limiting to some extent the absolute powers of States in times of national emergency.

Mr. AQUINO stressed the fact that all members agreed with the draft resolution in principle. Ideally, no matter how great the emergency, no measures limiting any form of freedom should be taken save those that were strictly necessary. In an imperfect world, however, Mr. Azkoul's draft resolution could do no more than exercise a certain degree of moral pressure; that degree would vary from country to country and would depend on the good will and conscience of each Government concerned.

Since every State had the uncontestable right, inherent in the concept of national sovereignty, to proclaim a state of emergency when that was necessary for its self-preservation, the Sub-Commission should make certain that no text it adopted laid it open to the charge that it was intervening in national affairs.

He wished to propose several drafting changes in Mr. Azkoul's resolution. The second recital spoke of "the pretext of emergency"; but presumably the emergency was real, and was only being used as a pretext for too drastic a limitation of freedom of information.

For the sake of clarity, the paragraph might be re-drafted to read: "Considering that a state of emergency has frequently led to the abridgement of this right".

In the operative part, the words "are compelled to" should be deleted, to eliminate the suggestion of prescribing to States in what circumstances they should declare a state of emergency; and the words "and steps" should be inserted after the word "measures", since the latter might be understood in some countries as applying only to legislative acts and not to Government decrees or summary action.

With those amendments, he would support the draft resolution.

Mr. AZKOUL replied that the French text of the second recital made it clear that the state of emergency had often served as a pretext for abuses. The phrase "when they are compelled to declare a state of emergency" in the operative part had been put in deliberately, in order to indicate that States should not declare a state of emergency without adequate and indeed compelling reasons. The deletion would not, however, alter the principal meaning of the draft resolution.

/In his view,

In his view, the word "measures" covered administrative and executive, as well as legislative, acts; if the Sub-Commission wished to insert the words "and steps", however, he would have no objection.

Mr. DEDIJER was opposed to the draft resolution for two reasons. First, its subject matter had been thoroughly discussed by the United Nations in the course of the past three years; Article XIII, paragraph 1 of the Convention on the International Transmission of News and the Right of Correction covered exactly the same ground. Secondly, the draft resolution was ineffectual in that it permitted the Governments themselves to decide to what extent they should limit freedom of information during an emergency.

The CHAIRMAN, speaking in his personal capacity, remarked that Mr. Azkoul's draft resolution was not a repetition of work already accomplished; its whole function was to provide a legal basis for the right of the Press and of the people to protest against undue governmental restriction of freedom of information.

Mr. AZMI agreed with Mr. Azkoul that Governments frequently imposed restrictions going far beyond the actual needs of the situation which had prompted the declaration of a state of emergency. The draft resolution merely recommended that restrictive measures should be taken only to meet those needs and then only to the extent absolutely necessary.

Mr. AZKOUL said that Mr. Dedijs had supplied him with fresh arguments in support of his draft resolution. Article XII, paragraph 1 of the convention to which Mr. Dedijs had referred in fact granted the State absolute powers to make and enforce laws and public regulations for the protection of national security and public order; the draft resolution would, on the other hand, provide some limitation of those powers.

Furthermore, since the United Nations could do no more than recommend, Governments would necessarily have to be the judges of the extent to which they could limit freedom of information. The chief effect of the resolution would be to exert moral pressure on them and to put a weapon in the hands of the people and the Press.

The only previous attempt by the United Nations to limit the powers of Governments in time of war or other public emergency was to be found in article 4 of the draft international covenant on human rights, which said that

a State might take measures derogating from its obligations under the covenant only "to the extent strictly limited by the exigencies of the situation". Since it was as yet uncertain how many States would eventually ratify the covenant, the draft resolution would fill an obvious need.

Mr. GANDHI was prepared to support Mr. Azkoul's resolution just as he had supported Mr. Binder's, in the hope that they and any other isolated recommendations which the Sub-Commission might adopt would towards the end of the session be collated into a single comprehensive proposal.

He thought that the second recital might be re-drafted to read: "Considering that limitations are liable to be placed, and have in fact been placed, on this right under an emergency or the pretext of emergency". The operative part should remain unaltered, unless it could be strengthened still more; he did not share the apprehension that it might be regarded as an infringement of the rights of States.

For his part, he felt that the immediate publicity in the Press which the draft resolution would receive if adopted by the Sub-Commission would have immediate telling effect while the approval by the General Assembly would follow in due course.

/Mr. JORDAN

Mr. JORDAN was in complete agreement with
Mr. Gandhi.

He would vote for Mr. Azkoul's draft resolution, although he was reluctant to support any text which recognized the right of Governments to impose limitation on freedom of information. The Press of his country enjoyed complete freedom; and it was perhaps his duty to lend his support to a compromise solution for the benefit of countries which were less fortunate.

To meet Mr. Dedijs's objection that the draft resolution left entire discretion to Governments, he proposed re-wording the operative part as follows:
"Recommends to all Member States that when they are compelled to declare a state of emergency, measures to limit freedom of information and of the Press shall be taken only in the most exceptional circumstances and shall not necessarily be considered essential to that state of emergency; and further Recommends that, if such measures should be considered necessary, they shall be applied only to those circumstances which made necessary the declaration of a state of emergency."

Mr. AZKOUL agreed in principle with the text proposed by Mr. Jordan, although he would have wished it to be somewhat shorter.

/At the same time

At the same time, while the new text appeared to go further than his own, its last sentence confined governmental restrictions to one particular field but failed to limit their extent in that field. For that reason, he wished to add to it a phrase repeating an idea contained in his own text: "and then only to the extent strictly required by the situation".

The CHAIRMAN suggested that Mr. Azkoul, Mr. Gandhi and Mr. Jordan might consult together and submit a joint text of the draft resolution at the following meeting.

It was so agreed.

Draft of an international code of ethics (E/CN.4/Sub.1/114)

The CHAIRMAN noted that the draft of an international code of ethics (E/CN.4/Sub.1/114) was a concrete proposal relating to paragraph (d) of the concluding section of the Secretariat memorandum (E/CN.4/Sub.1/106) which had been adopted as the basis for the Sub-Commission's discussion of the first item of its agenda. He explained that the procedure of considering concrete proposals as submitted was not to be interpreted as precluding further discussion of any of the other topics raised in the Secretariat paper. It was, however, impossible to engage in fruitful discussion unless draft proposals were submitted in advance.

/Mr. AQUINO

Mr. AQUINO called attention to a reference document prepared for the United Nations Conference on Freedom of Information (E/CONF.6/10) which listed three possible alternatives to be followed in drafting an international code of ethics: calling an international conference of professionals, delegating the task to professional organizations or having a United Nations organ prepare a model code. Before proceeding to the consideration of a specific draft code, the Sub-Commission would be well-advised to consider the desirability of delegating the task directly to an international professional conference. It should be remembered that even if the Sub-Commission prepared a draft code at its fourth session, such a conference would still be required at a later date.

In his opinion, the most practical procedure would be to refer the matter directly to an international professional conference particularly since the application of a voluntary code of ethics for journalists could not be secured through Governments.

The CHAIRMAN pointed out that under the United Nations system action by Member States was required. In the case of the proposed code of ethics, the Sub-Commission should follow the normal procedure of submitting a draft to the Economic and Social Council for subsequent

/transmission by

transmission by the Secretary-General to Member States for comment by Governments and national professional associations. At that stage, an international conference could appropriately be called to work out a final code.

Mr. AZMI stated that it had been his understanding that agreement had been reached that a code of ethics was definitely to be drafted at the fourth session of the Sub-Commission. He recalled that the Geneva Conference of 1948 had requested that the Sub-Commission prepare such a draft code and that the Economic and Social Council had invited the Sub-Commission to proceed with that task. He was therefore surprised that the question should be reopened in this manner.

In his opinion it would be inadvisable to convene a conference of professionals in the first place, since such a body would inevitably have to resort to a small drafting committee in the preparation of a text. In the circumstances, it would be preferable for the Sub-Commission to undertake the necessary preparatory work and submit a draft code of ethics to the Economic and Social Council in accordance with the usual procedure.

/Mr. AZKOUL

Mr. AZKOUL expressed the view that the Sub-Commission, a group of experts serving as individuals rather than as representatives of Governments, was in a particularly appropriate position for performing the task of drafting a code of ethics. Moreover, in view of the great cost of convening an international conference, the Economic and Social Council could hardly be expected to appropriate the necessary funds unless it was convinced that adequate preparatory work had been done to ensure successful results.

Mr. BINDER noted that the question of a code of ethics actually formed a part of item 7 of the agenda. Since the Sub-Commission had agreed on an order of priority for the various matters before it, he expressed the hope that consideration of a draft code of ethics at that stage would not preclude further discussion of items 1 and 2.

Moreover, he felt that the Sub-Commission might encounter wide differences of opinion regarding a code of ethics. In order to have significance, a code must be voluntary and must be drawn up by journalists themselves. Although it was his belief that a draft prepared by the Sub-Commission was unlikely to gain wide acceptance among journalists, and that no satisfactory draft could be adopted

/within a short

within a short period of time, he was willing to co-operate in the drafting work on the understanding that other important items would also be discussed.

The CHAIRMAN noted that the Sub-Commission was discussing a draft code of ethics in the absence of any draft resolutions relating to other points raised in the basic Secretariat document. He agreed that item 7 and item 1 of the agenda were closely inter-related and that the Sub-Commission was free to continue its discussion of item 1 if definite draft proposals were submitted.

It was his personal view that Mr. Binder was pre-judging the issue by stating that a code drafted by the Sub-Commission would not be widely accepted by journalists.

Mr. CHANG felt that the Sub-Commission was duty bound to draft a code of ethics. It should not fail to comply with the mandate assigned to it because of doubts regarding the usefulness of a code of ethics or possible criticisms of the draft it might prepare.

Mr. BINDLER pointed out that societies of working newspaper men had over a long period of time attempted the difficult task of drafting a universally acceptable code of ethics.

/It was

It was unlikely that in a brief period the Sub-Commission would reach agreement on the contents of a universally acceptable code.

Mr. GANDHI expressed the view that a draft code of ethics should be worked out as fully as possible during the fourth session. In his opinion, the Sub-Commission should first dispose of the easier problem of a code and defer the question of a court of honour to its fifth session. He noted that he had committed himself to a code but not to a court.

He suggested that members of the Sub-Commission should submit the draft prepared at the fourth session for the comments of professional journalists in their own and near-by countries so that they could return for a December session and adopt a final code of ethics in the light of criticisms and suggestions so obtained. He felt that if successful results were to be achieved and a satisfactory code prepared, a December session was essential. He, however, did not wish to see item No. 1 of the agenda regarding obstacles to the free flow of information lost sight of and suggested that while the "code" should be regarded as a stand-by for the current session, any propositions that members might have to make on the first item of the agenda should have priority.

The CHAIRMAN explained that the Sub-Commission could make recommendations regarding the frequency of its sessions but that a final decision in the matter was not within its competence.

/Mr. AQUINO

Mr. AQUINO stated that the Chairman's explanation of the procedure to be followed in the matter of a code of ethics was ample and satisfactory. It had not been his intention to disregard any previous agreement in the matter, but merely to request clarification.

Mr. AZKOUL presented the draft of an international code of ethics (E/CN.4/Sub.1/114) which he had prepared jointly with Mr. Azmi and Mr. Chang and explained that in his opinion a code of ethics was desirable in order to eliminate governmental restrictions imposed on journalists because of abuses of rights and privileges which might be committed by a very small minority of newspaper men. A voluntary code of ethics would also protect members of the press and encourage them to resist pressure of all kinds. A further advantage of a code of ethics would be the protection it guaranteed to the people of the world against abuse by journalists of the universal right to freedom of information. Finally, and most important of all, a code of ethics would aid in the preservation and dissemination of truth.

He explained that the joint draft was submitted as a working paper to provide a basis for discussion in the Sub-Commission. Comments and suggestions would therefore be welcomed.

/Mr. AZMI

Mr. AZMI concurred in the statement of Mr. Azkoul and added that the code was also intended to protect journalists from undue pressure and influence by advertising agencies and foreign governments.

If it was to be effective, the draft code must be considered in the light of the realities of the modern world.

The meeting rose at 12.50 p.m.
