

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON FREEDOM OF INFORMATION AND OF THE PRESS

SECOND SESSION

ADDENDUM TO DOCUMENT E/CN.4/SUB.1/38

DISCUSSION OF THE CONCEPT OF FREEDOM OF INFORMATION
IN ORGANS OF THE UNITED NATIONS

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The term "Freedom of Information" cannot be considered apart from such other traditional concepts as: freedom of opinion; freedom of expression; freedom of speech; freedom of the press; etc. Although of a comparatively recent date - under this new name and with its modern connotation - the term "Freedom of Information" has become widely used and references to it have often been made in recent declarations. In various terms references to the above mentioned freedoms may be found in 47 out of 52 available written constitutions of States Members of the United Nations (E/CN.4/Sub.1/40). Ever since the drafting of an International Bill of Human Rights was suggested, Freedom of Information has been mentioned repeatedly as a basic human right. Consequently, its inclusion in the International Declaration and Covenant of Human Rights as a distinct and separate item has been suggested by governments, international non-governmental organizations, and individuals, and has been accepted in the preparatory work of the International Bill of Human Rights.*

The Conference may wish to consult the references to Freedom of Information which were collected in documents presented to the Commission on Human Rights and in other documents in its consideration of Items 6(a) and (b) of the Provisional Agenda, "Consideration of the Drafting of a Charter of Rights and Obligations of the Media of Information." The present memorandum contains a collection of this material which the Conference may consider relevant.

* Originally, the Commission on Human Rights was asked, in accordance with its terms of reference, to submit to the Economic and Social Council a draft of an "International Bill of Rights." Its Drafting Committee decided (E/CN.4/21, p.3) "to attempt to prepare two documents; one a working paper in the form of a Preliminary Draft of a Declaration or Manifesto setting forth general principles, and the second working paper outlining a Draft Convention on those matters which the Committee felt might lend themselves to formulation as binding obligations." At its Second Session (E/600, p.19, 33-34), the Commission formulated a provisional text of the respective articles for both the "Declaration" and the "Covenant." The Commission also decided (ibid., p.6) "to apply the term "International Bill of Human Rights," or, for brevity, "Bill of Rights," to the entirety of documents in preparation: the Declaration, the Covenant, and the Measures of Implementation."

In 1946 and early in 1947, a number of suggestions concerning the draft of an International Bill of Human Rights were submitted to the United Nations by governments and non-governmental organizations. Others were collected by the Secretariat on its own initiative. The following are presented for the information of the Conference:

1) Documents presented by Member States

- a) DRAFT DECLARATION ON HUMAN RIGHTS. Proposal submitted by the Delegation of Cuba (E/HR/1, of 22 April 1946):

Page 3: "Every human being shall have the following rights:

3. The right to free investigation to enable him to form his opinions, and to express these opinions freely, subject to his being held responsible for his actions."

- b) STATEMENT OF ESSENTIAL HUMAN RIGHTS PRESENTED BY THE DELEGATION OF PANAMA. Prepared by the American Law Institute (E/HR/3, of 25 April 1946):

"Article 2. Freedom to form and hold opinions and to receive opinions and information is the right of every one. The state has the duty to protect this freedom.

"Article 3. Freedom of expression is the right of every one. The state has the duty to refrain from arbitrary limitation of this freedom and to prevent denial of reasonable access to channels of communication."

- c) DRAFT DECLARATION OF THE INTERNATIONAL RIGHTS AND DUTIES OF MAN. Formulated by the Inter-American Juridical Committee and submitted by the Delegation of Chile to the second part of the First Session of the General Assembly (E/CN.4/2, of 8 January 1947):

Page 3: "Article III. Right to Freedom of Speech and of Expression.

Every person has the right to freedom of speech and of expression. This right includes freedom to form and to hold opinions and to give expression to them in private and in public, and to publish them in written or printed form.

The right to freedom of speech and of expression extends to the use of whatever means of communication are available; freedom to use the postal service, the public utilities and telegraph,

c) (contd.)

telephone and radio communication; freedom to use the graphic arts, the theater, the cinema and other agencies for the dissemination of ideas. The right to freedom of speech and of expression includes freedom of access to the sources of information, both domestic and foreign. The right to freedom of speech and of expression includes the special and highly privileged right to freedom of the press.

The only limitations which the state may impose upon this freedom are those prescribed by general laws looking to the protection of the public peace against slanderous or libellous defamation of others, and against indecent language or publications, and language or publication directly provocative of violence among the people.

Censorship of the press is prohibited, whether by direct or indirect means, and all limitations imposed in the interest of public order shall only be applied subsequently to the publication of the material alleged to be of the offensive character described in the law. Censorship of the cinema may be in advance of publication, taking into account the particular form of publication and the necessity of protecting the public against matters offensive to accepted standards of conduct. The state may not retain a monopoly of radio broadcasting so as to deny to the individual the opportunity for the free expression of opinion through that instrumentality of communication."

- d) INTERNATIONAL BILL OF HUMAN RIGHTS. Draft presented by the United Kingdom Delegation. (Reproduced below under IV.b.)
- e) DRAFT CHARTER OF INTERNATIONAL HUMAN RIGHTS AND DUTIES. Proposed by the Delegation of Ecuador to the Second Session of the General Assembly and referred to the Commission on Human Rights (E/CN.4/32, of 12 November 1947):

Page 2-3: "3. Right to Freedom of Speech and of Expression through the press or other means of utterance or diffusion provided that such statements imply no abuse, calumny, personal insult, or immoral sentiments and are not opposed to the national interest, offences which would be liable to the penalties or proceedings prescribed by national law.

Accordingly, everyone shall have the right of access to sources of information both domestic and foreign."

- f) UNITED STATES PROPOSALS REGARDING AN INTERNATIONAL BILL OF RIGHTS (E/CN.4/4, of 28 January 1947):

f) (contd.)

Page 2: Article 2. "Among the categories of rights which the United States suggests should be considered, are the following:

a) personal rights, such as freedom of speech, information, religion and rights of property;"
(see also E/CN.4/17, of 6 February 1947).

Note: For another USA proposal see below under IV. (c).

g) COMMUNICATION TO THE CHAIRMAN OF COMMISSION ON HUMAN RIGHTS BY MOTION PICTURE ASSOCIATION. Presented by the United States Delegation (E/HR/17, of 10 May 1946):

Page 2: "...we believe these principles should be considered as a framework for the development of United Nations policy:

- 1) The right to know is a basic human right and, therefore, governments should accord equal access to sources of information.
- 2) The right to disseminate information is a basic human right and, therefore, governments should see that communication facilities are equally accessible to all; and
- 3) Discrimination against instruments of information violate basic human rights and, therefore, governments should impose no barriers, economic or otherwise, to impede exchange of information by word and image throughout the world."

2) Provisions Relating to Human Rights in Recent International Instruments

The five Peace Treaties with the Ex-enemy States signed in Paris on 10 February 1947 contain provisions relating to human rights. The following text is taken from the Italian treaty:

Article 15: "Italy shall take all measures necessary to secure to all persons under Italian jurisdiction, without distinction as to race, sex, language or religion, the enjoyment of human rights and to the fundamental freedoms including freedom of expression, of press and publication, of religious worship, of political opinion and of public meeting."

Identical provisions are contained in the Peace Treaty with Roumania (Art.3 (1)); Bulgaria (Art.2); Hungary (Art.2(1)); and Finland (Art.6).

3) References to Human Rights in Basic Documents of Specialized Agencies

a) International Labour Organization ("Philadelphia Charter," of 10 May 1944. Adopted by the General Conference of the International Labour Organization at its 26th session):

"The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:

b) freedom of expression and of association are essential to sustained progress;

3) a) contd.

d) ... free discussion and democratic decision with a view to the promotion of the common welfare."

b) The United Nations Educational, Scientific and Cultural Organization (Constitution, 16th November, 1945):

"... since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed; ...

For these reasons, the States parties to this Constitution, believing in full and equal opportunities for education for all, in the unrestricted pursuit of objective truth, and in the free exchange of ideas and knowledge, are agreed and determined to develop and to increase the means of communication between their peoples and to employ these means for the purposes of mutual understanding and a truer and more perfect knowledge of each other's lives;...

To realize this purpose the Organization will:

a) collaborate in the work of advancing the mutual knowledge and understanding of peoples, through all means of mass communication and to that end recommend such international agreements as may be necessary to promote the free flow of ideas by word and image."

4) Texts of Provisions Relating to Human Rights and Fundamental Freedoms of the Eight Trusteeship Agreements Approved by the General Assembly

a) Agreements with the United Kingdom concerning Tanganyika (A/152/Rev.2), the Cameroons (A/151/Rev.2) and Togoland (A/150/Rev.2), all of which are identical:

"Article 14. Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of Tanganyika freedom of speech, of press, of assembly, and of petition."

b) Agreements with France concerning the Cameroons (A/155/Rev.2) and Togoland (A/154/Rev.2), both of which are identical:

"Article 10, paragraph 4. The Administering Authority shall guarantee to the inhabitants of the territory freedom of speech, press, assembly and petition, subject only to the requirements of public order."

c) Agreement with Belgium concerning Ruanda-Urundi (A/152/Rev.2):

"Article 14. The Administering Authority shall guarantee to the inhabitants of the trust territory freedom of speech, press, assembly, and petition, subject only to the requirements of public order."

d) Agreement with New Zealand concerning Western Samoa (A/160/Rev.2):

"Article 12. Subject only to the requirements of public order, the Administering Authority shall guarantee to the inhabitants of the trust territory freedom of speech, of the press, of assembly, and of petition."

e) Agreement with Australia concerning New Guinea (A/153/Rev.2):

e) (contd.)

"Article 8. The Administering Authority undertakes that in the discharge of its obligations, under Article 3 of this agreement... it will in accordance with its established policy:

d) guarantee to the inhabitants of the Territory, subject only to requirements of public order, freedom of speech, of the press, of assembly and of petition."

5) Documents Submitted by Non-Governmental Organizations Having Consultative Status

a) INTERNATIONAL BILL OF RIGHTS. Proposal submitted by the American Federation of Labor (E/CT.2/2, of 20 August 1946):

Page 5: "... There must be a certain minimum of civil liberties... freedom of access to information..."

Page 6: "2. Freedom of expression..."

Page 7-8: "8. There must be freedom of opinion and expression and full access to the opinion of others.

9. The more full and complete knowledge of the world is extended and realized by the peoples of all nations, the less be the distance and misunderstandings between nations and people. Therefore, the right of the free access to, and exchange of information -- scientific, economic, social, religious and political, the promotion of knowledge and of cultural relations, the full and free dissemination of news by radio and press must be assured.

12. c) All economic or political discrimination and punishment for differences of political opinion or religious belief and practices are to be eliminated. The threat of being sent to concentration or labor camps as a punishment for difference of opinion with any government authority or dominant political party must be completely removed.

d) Freedom from censorship of books, press, radio and art, having due regard to the requirements of morals and decency."

b) RESOLUTION ADOPTED AT THE SECOND WORLD CONGRESS OF THE INTERNATIONAL ORGANIZATION OF JOURNALISTS (Prague, 3 to 7 June 1947) and submitted to the Economic and Social Council (E/448):

b) (contd.)

"The International Organization of Journalists requests the Economic and Social Council to bring before the International Conference on Freedom of Information the desirability of creating a covenant on freedom of information for submission to the General Assembly and the need to create an instrument to implement this covenant."

III.

In the course of discussions during the First Session of the Sub-Commission on Freedom of Information and of the Press (19 May to 4 June 1947), Mr. Mackenzie (United Kingdom) said:

"I think we have to bear in mind that our problem is a problem of fundamental human rights and not just the rights of any particular profession. I feel that the freedom to gather news is very important in all the work we are about to undertake, but the freedom to receive information is important too. I think we have to keep our minds open on that; that it is not just the rights of a particular profession but basic human rights we are concerned with." (E/CN.4/Sub.1/20, of 21 May 1947, p.4)

Mr. Christensen (Norway):

"I do not think it is necessary... to say much about the importance of freedom of information. As far as generalities go, it is perfectly clear to all of us what a precious thing it is and that we should do what we possibly can to defend it, to secure it as one of the basic human rights." (E/CN.4/Sub.1/32, p.5)

Mr. Lomakin (Union of Soviet Socialist Republics):

"We have come to realize that freedom of information is something more than the gathering, transmission and dissemination of news unfettered. It has to do with freedom, and freedom is an abstract thing. So is truth, which must concern us too, since we are all agreed that the information which we want to facilitate must be true. Therefore, we must deal in abstraction whether we like it or not. So will the Conference. The prospect, I confess, terrifies me not a little, being a practical man. However, although no philosopher, I am quite able to comprehend, for example, that truth is something more than a collection of so-called facts, and that freedom is something more than the absence of restrictions. This thought occurs to me in the same way that I understand the danger of not seeing the forest for the trees. I understand freedom, then, to mean something more than the absence of restrictions. Very simply - and this is by no means a strikingly original idea - I would say that freedom implies obligations and responsibilities at least in the same degree that it implies rights and prerogatives". (E/CN.4/Sub.1/30 P.2)

Mr. Van Heuven Goedhart (Netherlands) :

"Freedom of information is, in fact, a human right, but there should not be any misunderstanding as to what that means. In my opinion, it means above all the right of every man to express freely his opinions and his ideas, and to know what other people's opinions and ideas are; where opinions and ideas must be based on knowledge of facts, a free flow of news is an element of freedom of information. We ought to express the fact that the gathering, transmission and dissemination of facts, views and ideas should be really free and not only theoretically free."
(E/CN.4/Sub.1/32 p. 12)

Mr. Mackenzie (United Kingdom) :

"I think the distinction could be expressed like this; that the Sub-Commission will first have to advise the full Commission on the terms of an article for inclusion in the International Bill of Rights on the subject of freedom of information. This article will be part of the statement of fundamental human rights. It will be broad but simple, I should think, and it will be independent of the changing tides of international and domestic politics. It will not deal explicitly with particular forms or means of communication of news and opinions, but will state principles by which the use of any methods of communication should be governed, now or in the future. That is the first part of our task.

The second part is this; that the Sub-Commission will also have to make recommendations on what can be done in the light of present conditions in the international field, and, taking into account the different forms of governments which exist among the Member nations, to see what we can do to give reality to the general opinions which are to be laid down in the Bill of Human Rights being drawn up now by the full Commission on Human Rights." (E/CN.4/Sub.1/32 p. 18-19)

IV.

The Drafting Committee of the Commission on Human Rights held its First Session during the period 9 to 25 June 1947 and discussed the right to freedom of information, together with related problems. Reproduced here are quotations from four documents presented to the Drafting Committee :

a) DRAFT OUTLINE OF INTERNATIONAL BILL OF RIGHTS. Prepared by the Division of Human Rights (E/CN.4/AC.1/3, of 4 June 1947, page 6):

"Article 15. Everyone has the right to form, to hold, to receive and to impart opinions.

Article 16. There shall be free and equal access to all sources of information both within and beyond the borders of the State.

Article 17. Subject only to the laws governing slander and libel, there shall be freedom of speech and of expression by any means whatsoever, and there shall be reasonable access to all communications. Censorship shall not be permitted.

Article 18. There exists a duty towards society to present information and news in a fair and impartial manner."

b) INTERNATIONAL BILL OF HUMAN RIGHTS. Draft presented by the United Kingdom Delegation (E/CN.4/AC.1/4, of 5 June 1947, pages 11 - 12):

"Article 14: 1. Every person shall be free to express and publish his ideas orally, in writing, in the form of art, or otherwise.

2. Every person shall be free to receive and disseminate information of all kinds, including both facts, critical comment and ideas by books, newspapers, or oral instruction, and by the medium of all lawfully operated devices.

3. The freedoms of speech and information referred to in the preceding paragraphs of this Article may be subject only to necessary restrictions, penalties or liabilities with regard to: matters which must remain secret in the interests of national safety; publications intended or likely to incite persons to alter by violence the system of Government, or to promote disorder or crime; obscene publications; publications aimed at the suppression of human rights and fundamental freedoms; publications injurious to the independence of the judiciary or the fair conduct of legal proceedings; and expressions or publications which libel or slander the reputations of other persons.

Comment to Article 14:

The fundamental provisions of the Bill of Rights relating to freedom of speech and information will be completed by other agreements, resulting from the work of the sub-committee on Freedom of Information and the international conference on the subject.

Comments to Article 14 (3):

(a) The provision in paragraph 3 above, recognizing the right of Governments to impose the necessary restrictions, penalties or liabilities on publications likely or intended to incite persons to alter by violence the system of Government, is to be interpreted as strictly confined to such publications as advocate the use of violence, and does not apply to publications advocating a change of government or the system of Government by constitutional means.

(b) Some doubt is felt as to the suitability of the words "publications aimed at the suppression of human rights and fundamental freedoms" from the point of view of drafting. It may be that these words afford a wider power for the limitation of freedom of publication than is necessary or desirable. On the other hand it may be said that it would be inconsistent for a Bill of Rights whose whole object is to establish human rights and fundamental freedoms to prevent any Government, if it wished to do so, from taking steps against publications whose whole object was to destroy the rights and freedoms which it is the purpose of the Bill to establish. In the last analysis, perhaps, the best definition of a Nazi or Fascist regime is that it is a regime which does not recognize the dignity and worth of the human person and permit individuals to enjoy human rights and fundamental freedoms.

(c) In any case it will be observed that no Government is obliged by the Bill to make use of the powers of limitation which are provided in paragraph 3."

- c) United States Suggestions for Redrafts of Certain Articles in the Draft Outline E/CN.4/AC.1/3 (E/CN.4/AC.1/8, of 11 June 1947, page 3):

"Article 15. Freedom of opinion. Everyone has the right to form and hold opinions and to receive them from, and impart them, within or beyond the borders of the State.

Article 16. Freedom of Access to All Sources of Information. Freedom of everyone to receive, read and listen to all matters of information shall not be impaired, and there shall be free and equal access to all sources of information both within and beyond the border of a State.

Article 17. Freedom of Speech and Freedom of Expression. There shall be freedom of speech, of the press and of expression by any means whatsoever, and there shall be reasonable access to all channels of communication."

- d) The Representative of France Presented a Draft Containing a Preamble and 44 Suggested Articles (E/CN.4/AC.1/W.1 and E/CN.4/AC.1/W.2/Rev.1). The relevant part is quoted here from Document E/CN.4/21, of 1 July 1947, page 57:

"Article 22. No person may be molested for his opinions, even if they derive from other than national sources. Every person is equally free to change, affirm, or impart his opinion, or to hear and discuss the opinions of others.

Article 23. There shall be freedom of expression by word of mouth, in writing, in the press, in books or by visual, audible or other means; provided, however, that the author, and the publishers, printers, and others concerned shall be answerable for any abuse of this right by defamation of character or failure to present information and news in a true and impartial manner."

e) Suggestions of the Drafting Committee Appointed to Prepare Articles of an International Declaration on Human Rights (E/CN.4/21, p. 78):

"Article 21. Everyone is free to hold or impart his opinion, or to receive and seek information and the opinion of others from sources wherever situated.

Article 22. There shall be freedom of expression either by word, in writing, in the press, in books or by visual, auditive or other means. There shall be equal access to all channels of communications.

(This would need to be considered by the Sub-Commission on Freedom of Information and of the Press for possible inclusion in the Convention or Declaration and would have to be elaborated further.)"

V.

The First Committee of the Second Session of the General Assembly discussed in its seventy-ninth to eighty-sixth meetings (22 to 27 October 1947) a draft resolution on "Measures to be Taken Against Propaganda and the Inciters of a New War". In this discussion several statements were made on the subject of freedom of information as a fundamental human right.

The Following are Relevant Portions of the Summary Records:

The representative of the USSR: "Various reasons had been invented to oppose the Soviet Union proposal by reactionaries who saw their warmongering business endangered. For instance, the suppression of war propaganda by law was declared incompatible with fundamental human rights and the freedom of the press to discuss any and every problem on its merits. The instigation of war was a crime against humanity and must not be masked by the cry that censorship was incompatible with human rights. The introduction of rules to regulate social relations for the benefit of human society was a sacred right of the people..." (E/C.1/SR.79, p. 4-5)

The representative of the Philippines: "The proper place to discuss the question of war propaganda and incitement of a new war was the International Conference on Freedom of Information, which was to meet in March 1948. He quoted a number of items already placed on the agenda for that Conference foreshadowing the universal desire of the Members of the United Nations to come to

an agreement and perhaps even to accede to international conventions prescribing false and tendentious reports which might aggravate relations between nations, provoke conflicts and incite to a new war." (A/C.1/SR.80, p. 1)

The representative of the USA: "The proper place for the full consideration of the rights and responsibilities of the press and of other means of communication was the Conference on Freedom of Information which was to meet in March 1948. The United States had agreed to the agenda of that Conference, which provided for the seeking of constructive measures to promote responsibility in the exercise of the right of free speech and a free press." (A/C.1/SR.80, p. 4)

The representative of Canada: "The third paragraph of the Soviet Union's proposal called on Governments to prohibit, on pain of criminal penalties, any propaganda on behalf of a new war. Such a proposal could not be accepted by a country where freedom of the press was regarded as a fundamental principle. Furthermore, in such countries the public was in a position to draw its own conclusions from the different opinions put forward." (A/C.1/SR.81, p. 2)

The representative of Guatemala: "The delegation of Guatemala had approved the inclusion of the principle of freedom of speech in the Charter and had later incorporated it in its national laws, on the basis that it should be the responsibility of the individual to abstain from abusing that freedom, and that any false news should be rectified by complete news coverage and open discussion. Consequently, the delegation of Guatemala would be contravening its own laws if it supported a proposal tending to limit freedom of expression. Mr. Holz Bennet supported the Australian proposal that the whole problem should be sent for detailed consideration to the next international conference on freedom of information and of the press." (A/C.1/SR.82, p. 9)

The representative of New Zealand: "... could not agree to the suggestion of the United States representative that the Committee should merely reject the Soviet Union resolution. By admitting it to the agenda, the Committee had recognized that warmongering constituted a real danger and deserved attention. Consequently, he supported the Australian suggestion that the matter should be referred to the next international conference on information, and he also agreed with Mr. Evatt that the correct remedy for false propaganda was to provide complete news coverage and freedom of discussion." (A/C.1/SR.82, p. 10)

The representative of Venezuela: "It would be well to bear in mind that the Conference on Freedom of Information and the Press would, probably, examine the same question and probably supply some solutions for the problem.

The proposals submitted by Australia and Canada and also the French proposal were based on the principle that free dissemination of information should be insured all over the world in order to draw all nations closer together and re-establish mutual confidence." (A/C.1/SR.83, p. 5)

The representative of Sweden: "... noted that varying opinions had been expressed about how to eliminate warmongering and felt that the French proposal to refer the question to the Conference on Freedom of Information for examination was appropriate. He would support such a proposal." (A/C.1/SR.83, p. 5-6)

The representative of Egypt: "... as it was not easy to define what was meant by freedom of expression and by incitement to war and as references were made to the Constitutions of the various States, it was difficult to carry out that undertaking. It was, therefore, desirable to refer this question to the Conference on Freedom of Information for consideration." (A/C.1/SR.83, p. 6)

The representative of France: "The delegation of France, while it approved the idea underlying the proposals made by the delegations of Canada and Australia, would submit a proposal that the questions involved in warmongering be referred for study to the Conference on Freedom of Information." (A/C.1/SR.83, p. 7)

The representative of the USSR: "It was true that freedom of speech was a fundamental freedom." (A/C.1/SR.83, p. 9)

The representative of Belgium: "... had no objection to the other proposals provided that their implementation were compatible with freedoms of speech and of the press, which were fundamental principles of the Belgian Constitution. He agreed with other delegations that the study of practical measures to implement the proposals should be referred to the next International Conference on Freedom of Information." (A/C.1/SR.84, p. 1)

The representative of Brazil: "The State was not an end in itself, and its duty was to serve the individual and not to absorb him. Accordingly, though the State played an important part in the cultural development of mankind, all cultural forms were the result of free individual thought and choice; and the State could not exceed its functions. To hinder the free expression of ideas and of conflicting opinions would be to destroy freedom of choice and would lead to totalitarianism." (A/C.1/SR.84, p. 4)

NOTE: Further quotations are to be found in document E/CN.4/Sub.1/38, p. 27, 28, 31 and 32.

H

The Third Committee of the Second Session of the General Assembly, during its fifty-seventh to sixtieth and sixty-eighth to seventy-second meetings (3 to 29 October 1947), considered the two following draft resolutions:

A) Draft Resolution Submitted by the Delegation of the Union of Soviet Socialist Republics Concerning the Convening of a Conference on Freedom of Information (A/C.3/157).

Many references were made in this connection to the United Nations Conference on Freedom of Information. The Summary

Records of the Third Committee (A/C.3/SR.57-60) contain the following relevant statements:

The representative of the USSR: "An International Conference on Freedom of Information was of tremendous importance. The education of the masses could be achieved only through the correct reporting of news by the press." (A/C.3/SR.57, p. 8)

The representative of Argentina: "Argentina knew the importance of freedom of the press, and he, as a newspaper man, was particularly interested in a Conference on Freedom of Information, which would work towards honest, truthful, accurate reporting of news. In cases of violation of freedom of information, machinery should be established to enforce that principle." (A/C.3/SR.57, p. 9)

The representative of the Byelorussian SSR: "It was necessary to get rid of the warmongering influence on the press.

The Conference was of such an importance that its program of work should be determined by the General Assembly." (A/C.3/SR.57, p. 10)

The representative of the USA: "In countries where the flow of information was under Government control, it might be possible to direct the media of information. In the United States there existed a free press which interpreted situations differently, and to that disagreement the American people warmly adhered.

The Conference was on Freedom of Information and its agenda would have to be based on the concept of such a freedom." (A/C.3/SR.57, p. 11)

The representative of the United Kingdom: "In the United Kingdom journalists had accepted a code of behaviour and regarded freedom of information as an essential element in guaranteeing and safeguarding human rights. The Conference could, therefore, draft a declaration establishing a code of behaviour for the world press, but it was undesirable to give it a political form." (A/C.3/SR.58, p. 4)

The representative of Chile: "The Chilean press was neither the tool of the State nor the handmaiden of big financial combines; it was the expression of the various trends of Chilean public opinion. The Chilean delegation had assisted in incorporating these principles in the provisional agenda of the Conference on Freedom of Information. The agenda amply met the wishes of those who sincerely desired the press to be not only the free source of candid information but a decisive factor in peaceful and friendly international relations in defense of true democracy and the maintenance of world peace." (A/C.3/SR.58, p. 5)

The Delegation of Panama presented an amendment, (A/C.3/SR.60, p. 6) which states, in part: "...Recognition of the fact that freedom of the Press is the right of all citizens with the exception of persons indulging in any form of propaganda aimed at the destruction of the democratic form of governments or at propaganda on favour of war or aggression."

B) Discussion of the Draft Resolution Proposed by the
Delegation of Yugoslavia (E/C.3/162)

The following are extracts from the Summary Records of the discussions of the Third Committee:

The representative of the USA: "The Yugoslav proposal was plainly within the scope of the terms of reference of the Conference on Freedom of Information and of the Press about to take place at Geneva...

The remedy for the existing situation was not, as the Yugoslav resolution implied, to be found in a greater restriction of freedom of information. On the contrary, it was to be sought in greater freedom of such information, both internationally and nationally, and in the abolition of monopolies and of the imperfections in the various systems of information which existed at the present time in varying degrees almost everywhere in the world." (A/C.3/SR.68, p. 4)

The representative of Panama: "A regimented press subjected to too strict rules or to direct control by the Governments was not a free press. Absolute freedoms of the press and of information were, however, necessary to democratic systems." (A/C.3/SR.68, p. 4)

The representative of France: "... it was extremely important that some definite result should be achieved in the campaign against false news. The French delegation, therefore, felt obliged to submit a proposal which, although based on the same premises as that of the Yugoslav delegation, nevertheless suggested quite different methods. The French delegation agreed with the United States delegation that the matter came within the scope of the Geneva Conference." (A/C.3/SR.68, p. 5)

The representative of Cuba: "It could be argued that the legal difficulties might be solved but that was a question for the Conference on Freedom of Information and of the Press and not for the Third Committee. The problem of doing away with war propaganda had been decided in the First Committee; the further question of the dissemination of false news was for the Conference to decide. No other appropriate measures seemed feasible." (A/C.3/SR.71, p. 4)

The representative of the Ukrainian SSR: "The rights of freedom of speech and of the Press were an important part of the democratic structure, but those freedoms were difficult to define and in certain countries they had no reality. In the Soviet Union special laws existed which put an obligation on the Press to defend democratic rights. Nothing could be published which savoured of racial prejudice or which encouraged national hate, nor anything of an anti-democratic character which admitted the idea of the mastery of one country over another." (A/C.3/SR.71, p. 5)

NOTE: Further quotations are to be found in document E/CN.4/Sub.1/38, p. 36, 37, 38 and 42.

VI

1) The following are extracts from the Summary Records of the discussions of the Second Session of the Sub-Commission on Freedom of Information and of the Press (19 January to 3 February 1948):

Mr. Mackenzie (United Kingdom): "... believed that Articles 17 and 18 (of the draft covenant) might be combined in the following text: Every man has the right to freedom of opinion and expression and to freedom to seek and collect the information and opinion of others from sources wherever situated." (E/CN.4/Sub.1/SR.25, p. 2)

Mr. Lomakin (USSR): "Was freedom of expression to be extended to propaganda in favour of murder or to warmongering? Would one of Hitler's satellites be allowed full freedom to express the idea of revenge? It was important to guard against such a possibility." (E/CN.4/Sub.1/SR.25, p. 3)

Mr. Geraud (France): "...recalled that the French Declaration of the Rights of Man -- that of 1789, not the Declaration of 1791 -- guaranteed to everybody the right of free communication of ideas, of free speech, of free writing and printing, except on matters forbidden by law.

The principle of freedom of information should be combined with the ideas of responsibility and, in this monopolistic era, of equality."

Mr. Geraud "asked whether it would not be better to speak of the 'right to' rather than the 'freedom of' expression and quoted the following passage from the French Declaration of the Rights of Man: 'Free expression of thought and opinions is one of man's most sacred rights.'" (E/CN.4/Sub.1/SR.25, p. 4-5)

Mr. Mora (Uruguay): "... considered that the question of limitations on freedom of expression was the most important problem. It was a dangerous problem, however. The road to restriction was perilous; to travel along it might be to nullify declarations of freedom.

He suggested that the covenant should include the Uruguayan proposal of a ban on censorship. At the same time the general principle of responsibility for expression of opinion must be accepted along with the principle of freedom of expression." (E/CN.4/Sub.1/SR.26, p. 3)

Mr. Geraud (France): "Limitations on freedom needed to be carefully defined. Unless that were done, it would be left to governments to interpret them. In paragraph 3 of Article 17 there was a phrase, 'intended or likely to incite persons to alter by violence the system of government', which courts could interpret in such a manner as to nullify any declarations of principle." (E/CN.4/Sub.1/SR.26, p. 3)

Mr. Sychrava (Czechoslovakia): "... believed that freedom of expression of opinion could be considered a right only on the condition that the right of others to a like freedom was not endangered. Rights and obligations were inseparable, and obligations should be mentioned in the draft." (E/CN.4/Sub.1/SR.26, p. 4)

Mr. Halperin (representative of the Co-ordinating Board of Jewish Organizations): "There was justifiable reluctance to incorporate restrictions on freedom in the Bill of Human Rights; but experience had shown that certain limitations were indispensable for common good. It was generally conceded that absolute freedom was an unattainable ideal and that some restrictions were necessary and desirable. The prevention of the dissemination of prejudice and hatred was at least as necessary as the prevention of obscenity. The freedom to disseminate hatred was one of the most important reasons for its survival through the centuries." (E/CN.4/Sub.1/SR.28, p. 2)

Mr. Van Heuven Goedhart (Netherlands): "... would like to restrict the clause (concerning the advisability of granting absolute rights to receive information) to the effect that Governments would not be entitled to interfere with freedom to receive information, such as, for instance, freedom to listen to foreign radio programmes." (E/CN.4/Sub.1/SR.29, p. 2)

Mr. Chafee (USA): "... said that there were two questions to be decided. The first was whether to limit protection to protection against Governments, or whether Governments should be obliged to give protection against private action, as in Article 8 concerning slavery. He did not favour the limiting of protection to protection against private interference and against governmental interference. Secondly, the Sub-Commission had to decide whether limitations should apply to both receiving and disseminating information." (E/CN.4/Sub.1/SR.29, p. 3)

Mr. Mackenzie (United Kingdom): "... stated that freedom of communication did not depend upon who owned the organs of communication but rather upon whether or not they were available to the people for the expression of their opinions... He urged that all nations should work together toward the real aim of freedom of information, which was not to determine who was right but rather what was right." (E/CN.4/Sub.1/SR.31, p. 2)

Mr. Lomakin (USSR): "... was in principle in favour of the liberty of the Press. It happened sometimes that the Press belonged to the rich and was biased, but that did not mean that the principle of the independence of the Press and the right of the public to be kept informed should not be upheld." (E/CN.4/Sub.1/SR.31, p. 6)

Mr. Illueca (Panama): "... suggested that paragraph 4(a) of the Drafting Committee's Report should mention radio as well as "written and printed matter". Before the Second World War the Nazi and Fascist States had isolated their peoples from contact with the rest of the world. Recurrence of that situation must be avoided. There were examples of a similar danger even in later times." (E/CN.4/Sub.1/SR.32, p. 2)

Mr. Mackenzie (United Kingdom): "... wished to emphasize again that availability of media of information, whatever their form of ownership, was the only safeguard of freedom of expression. He expressed the hope that the international conference at Geneva would discover means by which not only national but international pressure could be brought to bear upon those concerns that were not operating in the public interest." (E/CN.4/Sub.1/SR.34, p. 5)

Mr. Maheu (representative of UNESCO): "It had been argued that monopolies were a historic growth and in some instances a practical necessity. They nonetheless resulted in a dangerous concentration of power. The danger of State monopolies was clear, but private monopolies presented an equal danger. They put too much power into private and often irresponsible hands. They also led to commercialism and vulgarization in the worst sense of those words. Under monopoly, news and culture became merchandise.

UNESCO's Charter laid emphasis on 'mutual respect for cultures'. That presupposed a right to self-expression for every nation. International monopolies, however, prevented local cultures from flourishing." (E/CN.4/Sub.1/SR.35, p. 2)

Mr. Ingles (Philippines): "... drew attention to the fact that, while Article I contained three classes of restrictions, namely, those in the interest of national security, morals and public order, no restriction was included to prohibit publications which encouraged acts of aggression in the international field. The Sub-Commission should vote whether to include a restriction in the interest of international security." Mr. Chafee (USA): "... thought there was not yet enough material available for such a discussion. Supported by Mr. Mackenzie (United Kingdom), he proposed reserving any mention of such a restriction until after the Conference." There being no objection, it was decided to postpone discussion of that restriction until after the Conference. (E/CN.4/Sub.1/SR.35, p. 8)

Mr. Chang (China): "... believed that the right of free speech was the right of every human being and it was in the interests of international society that every citizen should have that right guaranteed by his government. As important as free speech was the right to listen with freedom. Accuracy and objectivity were qualities too exacting to be taken for granted; they did not mean the same thing to everybody. The peoples of the world had the right to receive all comprehensive and representative information, whether it was objective or biased, and they must be trusted to discern the truth." (E/CN.4/Sub.1/SR.36, p. 2)

Miss Sender (representative of the American Federation of Labor): "... felt that sub-paragraph 1 (in E/CN.4/Sub.1/39) should include mention of the right of citizens to be fully and truthfully informed." Mr. Martin (representative of the International Organization of Journalists): "agreed... that the right of citizens to receive information should be specifically stated. It would never be safe to entrust to any authority the right to determine what information constituted the truth." (E/CN.4/Sub.1/SR.36, p. 4-5)

2) In the documents presented by its members to the Second Session of the Sub-Commission on Freedom of Information and of the Press, the following statements are relevant:

Mr. Lomakin (USSR): "... it is essential to recognize that freedom of the press is the right of all citizens, with the exception of persons engaged in any form of Fascist propaganda or in propagating aggression....

In the second place, it must be admitted that merely to

population and their organizations have at their disposal the material resources without which freedom of the press cannot be made a practical reality...

Rights should be counterbalanced by duties. Freedom also presupposes responsibility. Without definite obligations and responsibilities freedom of information may, and in practice frequently does, turn into freedom of non-information." (E/CN.4/Sub.1/37, p. 2, 3 and 4)

Mr. Van Heuven Goedhart (Netherlands): "The main task of the Second Session of the Sub-Commission on Freedom of Information and of the Press, as laid down by the Economic and Social Council, will be an examination of what rights, obligations and practices should be included in the concept of freedom of information. The allocation of this task clearly links the work of the Sub-Commission to that of the Commission on Human Rights, which is at present engaged in drafting an International Declaration and Covenant on Human Rights. The relationship between the two bodies is further emphasized by the fact that the Commission has asked the Sub-Commission for its views on the suggested articles on freedom of information in the Declaration and Covenant.

The following text was suggested by a small Netherlands Commission for an article on freedom of expression in a Bill of Human Rights:

Everyone has the right to reveal thoughts and feelings, but is responsible under national law for abuse of this right. National law includes among the abuses of this right the intention of violating the right itself, or the other human rights mentioned in this Statute, or of undermining respect for these rights.

Criticism of the law protecting this right is not an abuse of the right.

No legal regulation may abridge the liberty of the citizen to receive information of any kind." (E/CN.4/Sub.1/39, p. 1-2)

Mr. Fontaina (Uruguay): "1. In its fullest sense freedom of information is world wide, indivisible, it cannot exist fully in any country so long as it is denied in any other country.

2. Whoever exercises that right in the press, on the radio, in the movies, etc., should never forget that he is not merely informing, but that he is teaching. Then he will be cognizant of his rights and will accept his obligations with a greater sense of responsibility: with the responsibility of a teacher." (E/CN.4/Sub.1/41, p. 1)

Mr. Chang (China): "By adopting and recommending a draft agenda for the World Conference on Freedom of Information, and by placing on this agenda the items that we did, we of this Sub-Commission have made amply evident the importance which we attach to 'freedom of information' and things which we would like to see done to promote this freedom. We have all assumed, and I think rightly, that this freedom which we seek to promote is in essence, or perhaps in somewhat more old-fashioned terminology, the freedom of speech. 'Freedom of speech', the first of the Four Freedoms for which the United Nations fought in the war, is one of those inalienable human rights which have been written into many a historic charter and are safeguarded by appropriate provisions of the constitution of every modern state. It belongs unquestionably in an International Bill of Rights, even though as we are at

present organized in this world such a provision would probably have more of a moral or -- in Professor Chafee's words -- an emotional compulsion, rather than a legal one." (E/CN.4/Sub.1/42, p. 1)

Mr. Sychrava (Czechoslovakia): "The freedom to communicate and disseminate one's thought and knowledge is, like any other freedom, closely linked with the general obligation to behave as persons could and should behave without prejudice to the common interest. Therefore, such freedom may be recognized as a human right, meriting the protection of the law provided only it is not availed of by a person to secure, by deceit or threats, for himself or for another person, unjustified advantages to the detriment of the rights of others, and provided his statements are -- even without malice on his part -- not likely to endanger the moral basis, security, freedom and other spiritual and material interests of society." (E/CN.4/Sub.1/50, p. 1)

Mr. Geraud (France): "1) Thought is free. No one has the right to dictate the thoughts of others.

2) Every person has the right to publish what he thinks and what he knows, to explain his ideas, to relate facts, to use all methods of expression.

3) Every person has this right, not only in respect to himself, but on behalf of others. It is important that the people should be kept informed and enlightened on all manifestations of human activity, and in particular, on current events." (E/CN.4/Sub.1/51, p. 1)

Mr. Lomakin (USSR): "To recognize the freedom of the press as the right of all citizens, exclusive of persons who come out with propaganda of fascism in any form, with propaganda of a new war." (E/CN.4/Sub.1/54, p. 10)

Mr. Lomakin (USSR) presented the following Draft Article for the Declaration on Human Rights:

"In the interests of Democracy, everyone shall be guaranteed by law the right to free expression of opinion, especially freedom of speech and the press and also of graphic representation.

It is inadmissible to use freedom of speech and of the press for purposes of the propaganda of fascism and aggression, the dissemination of false news and dishonest information and also for the purposes of fomenting hostility between peoples." (E/CN.4/Sub.1/56)

Mr. Sychrava (Czechoslovakia) suggested Text of Article on Freedom of Information in International Declaration on Human Rights:

"Everyone has the right to seek, to learn and to impart information and ideas, and the duty to abstain from spreading false or malicious information and to help by peaceful means to increase the flow of true and useful knowledge." (E/CN.4/Sub.1/60)

Mr. Ferguson (Canada): "Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated." (E/CN.4/Sub.1/61, p. 1)

Mr. Mackenzie (United Kingdom): "If a privately owned newspaper or a radio station opens its columns or its programmes fairly to both sides of every important question, then Freedom of Expression exists -- whatever the ownership. On the other hand, if a state-owned newspaper or radio station allows only one side of an important question to be heard, then freedom of expression perishes -- despite the ownership. The test is availability. If we can do something to ensure that in all countries that test shall be applied, then we shall have indeed advanced the cause of Freedom of Information -- whatever we are able to do about the forms of ownership." (E/CN.4/Sub.1/64, p. 2)

3) A Drafting Committee of the Sub-Commission on Freedom of Information and of the Press submitted the following texts to be included in the drafts of the Declaration and of the Covenant on Human Rights:

A) The Drafting Committee on an Article For the Declaration on Human Rights decided to pass to the Sub-Commission the following two texts:

"a) Everyone shall have the right to freedom of opinion and expression; freedom to seek and receive information and the opinions of others by any medium, within and beyond the borders of his own land; and having regard to the rights of others, to transmit all information and opinion without limitation.

b) The free communication of thoughts, opinions, and facts, regardless of frontiers, is one of the rights of man. Everyone has, therefore, the right to speak, to write, to print, to employ freely all modes of expression, being liable only for the abuses of this freedom in cases determined by the law of nations." (E/CN.4/Sub.1/45)

B) Article 17 of the Draft Covenant:

"I. Every person shall have the right to freedom of thought and expression without interference by governmental action: this right shall include freedom to hold opinions, to seek, receive and impart information and ideas, regardless of frontiers, either orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices.

"II. The right to freedom of expression carries with it duties and responsibilities. Penalties, liabilities or restrictions limiting this right may therefore be imposed for causes which have been clearly defined by law, but only with regard to:

- a) Matters which must remain secret in the vital interests of the State;
- b) Expressions which incite persons to alter by violence the system of government;
- c) Expressions which directly incite persons to commit criminal acts;
- d) Expressions which are obscene;

- e) Expressions injurious to the fair conduct of legal proceedings;
- f) Expressions which infringe rights of literary and artistic property;
- g) Expressions about other persons which defame their reputations or are otherwise injurious to them without benefiting the public.

Nothing in this paragraph shall prevent a State from establishing on reasonable terms a right of reply or a similar corrective remedy.

"III. Previous censorship of written and printed matter, the radio and newsreel shall not exist.

"IV. Measures shall be taken to promote the freedom of information through the elimination of political, economic, technical and other obstacles which are likely to hinder the free flow of information."

(E/CN.4/Sub.1/65)

4) The Recommendations of the Sub-Commission Concerning the Draft Articles for the Declaration and Covenant are to be found in the Report of the Second Session of the Sub-Commission on Freedom of Information and of the Press. (E/CN.4/80)