

**ECONOMIC
AND
SOCIAL COUNCIL**

**CONSEIL
ECONOMIQUE
ET SOCIAL**

E/CN.4/Sub.1/SR 11
14 June 1949

ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON FREEDOM OF INFORMATION AND OF THE PRESS
Third Session

SUMMARY RECORD OF THE FIFTY-FIRST MEETING

Held at Lake Success, New York,
on Thursday, 2 June 1949, at 2.30 p.m.

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(discussion 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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Representative of a specialized agency:

Mr. FARR United Nations Educational, Scientific and Cultural Organization (UNESCO)

Secretariat:

Mr. HOGAN Secretary of the Sub-Commission

ADOPTION OF THE AGENDA (E/CN.4/Sub.1/68, E/CN.4/Sub.1/68/Rev.1, E/CN.4/Sub.1/69, E/CN.4/Sub.1/73, E/CN.4/Sub.1/74 and E/CN.4/Sub.1/75) (discussion continued)

The CHAIRMAN suggested that a time-limit of ten minutes should be set for all speeches, as only consecutive interpretation was available for the time being.

Mr. ZONOV saw no reason to set a time-limit of ten minutes on all speeches, especially as the speeches had not so far been very long. He therefore proposed that the first speech of each representative should be limited to twenty minutes and all other speeches to ten minutes.

Mr. FONTAINA supported the Chairman's suggestion, which would enable the Sub-Commission to save valuable time. The Sub-Commission was a body composed of experts who had no need to make long statements of principle.

Mr. WILLIAMS also supported the Chairman's suggestion. Since the members of the Sub-Commission were experts with a long experience of journalism, a profession in which considerations of space took precedence over everything else, they should make their speeches short and to the point.

Mr. DEDIJER saw no need to limit the length of speeches, as none of them had yet taken longer than ten minutes. Moreover, it would be impossible to limit the length of speeches three days after the beginning of the session. Such a procedure would be quite without precedent in the United Nations.

Since the Sub-Commission had to discuss fundamental principles and not technical questions, he did not think any restriction should be placed on the freedom of speakers to express themselves fully.

/The CHAIRMAN

The CHAIRMAN withdrew his suggestion and appealed to the members of the Sub-Commission to exercise moderation.

Mr. AZMI said that the authors of the three draft agendas had agreed on a certain number of general principles.

He explained that the first part of his draft (E/CN.4/Sub.1/75) was only aimed at gathering the documentation necessary to begin the study of the substantive questions listed in the second part. The first part was therefore intended to give the Secretary-General precise instructions on the way in which to collect the desired documentation.

In that connexion he emphasized that UNESCO should be mentioned in item 2 of his draft, since that organization had carried out important work in the field of freedom of information.

In the light of the remarks made by Mr. Azkoul concerning items 4 and 5, Mr. Azmi proposed that item 4 of his draft should be altered to read: "Establishment of procedure for the examination of communications".

The Sub-Commission's main task would be to consider the questions listed in the second part of the draft agenda. The documentation gathered by the Secretary-General on the Sub-Commission's instructions would enable those questions to be thoroughly studied during the two following sessions.

Thus, the first thing to be done was to give the Secretariat some guidance in its task of collecting the documentation.

Mr. GERAUD pointed out that the work to be done by the Sub-Commission at the current session should be divided into two parts. The first part consisted of two stages.

The first stage would be to create, within the Secretariat, a sort of permanent body to ensure the continuity of the Sub-Commission's work in the interval between sessions. There was no question of setting up a bureaucracy, but neither would it suffice simply to collate and analyze the communications received. It was necessary to seek new sources of documentation, to encourage communications, etc.

The second stage would be concerned with methods of work. He pointed out that Mr. Azmi, in the first part of his draft, had simply reproduced the wording of the items proposed by the Secretariat (E/CN.4/Sub.1/69). In his opinion those items should be drafted in a more detailed and explicit manner, so that the Secretariat should know exactly what it had to do.

The second part of the Sub-Commission's work would consist primarily of deciding on the order of priority of questions coming within its terms of reference. The Sub-Commission's chief duty was to contribute to international co-operation in the field of freedom of information. It was therefore bound to watch closely the application of conventions, to suggest the conclusion of additional conventions, to draw attention to any shortcomings in the texts revealed by their implementation and to suggest improvements if necessary. Topical questions could thus be considered by the Sub-Commission with the aid of the Secretariat's up-to-date documentation.

Moreover, the Sub-Commission should examine a number of special questions including the status of the foreign press, equitable participation by the various countries in freedom of information, and the delimitation of the competence of the Sub-Commission on Freedom of Information and of the Press and that of UNESCO.

To sum up, he considered that the Sub-Commission should:

- (1) set up an organ in the Secretariat to assist it;
- (2) decide on its methods of work;
- (3) establish an order of priorities within the Sub-Commission's terms of reference, thus defining its functions;
- (4) arrange for continuous studies to be carried out by the permanent Secretariat organ provided for in point (1) above.

Mr. BINDER said that it was of primary importance to point out clearly to the Secretariat the duties devolving upon it with regard to each item. He did not share Mr. Géraud's opinion that under its terms of reference the Sub-Commission had to implement the resolutions of the United Nations Conference on Freedom of Information. Under Economic and Social Council resolution 197(VIII) the Sub-Commission should consider resolutions only to the extent that they were directly related to the questions it had to solve. The Sub-Commission could not be transformed into an organ to supervise the implementation of those resolutions.

In conclusion, Mr. Binder stated that he was in favour of the first five items as they appeared in Mr. Azmi's draft agenda.

The CHAIRMAN, speaking as a member of the Sub-Commission, thought it would be helpful to outline immediately a three-year work programme from which a few items would be selected for consideration during the current session. It was understood that the three-year programme would

only be set up tentatively and would be subject to modification at the Sub-Commission's will. It was necessary to adopt a general programme which could serve as a general framework for the Sub-Commission's work and which would enable the Secretariat to prepare the necessary documentation.

The Chairman favoured the first part of Mr. Azmi's draft and did not think, as did Mr. Geraud, that there was any need to broaden its terms.

In addition, the Chairman thought that items 4 and 5 of Mr. Azmi's draft could be combined as follows: "Establishment of procedure for handling and examining communications".

Lastly, although certain organs of the United Nations had appointed sub-committees to examine communications, the Chairman thought that the Sub-Commission, although it was only composed of a limited number of members, could deal with that work itself.

Mr. AZMI formally proposed that the following items should be placed on the agenda of the current session:

1. Definition of the functions of the Sub-Commission.
2. Consideration of means by which the Sub-Commission might receive from governmental and other sources information concerning current legislation and practices in the field of its competence.
3. Establishment of procedure for continuous liaison with UNESCO.
4. Establishment of procedure for continuous liaison with information enterprises and professional organizations.
5. Consideration of means by which the Sub-Commission might regularly be kept informed regarding the application of the resolutions of the United Nations Conference on Freedom of Information.
6. Establishment of procedure for handling and examining communications.

In reply to the CHAIRMAN who asked whether the new item 1 should be included in a work programme drawn up for three years, Mr. AZMI said that he had introduced that item in order to settle the apparent disagreement between Mr. Geraud and Mr. Binder regarding the Sub-Commission's terms of reference.

Under Council resolution 197(VIII), the Sub-Commission was a permanent international organization with the function of carrying on the work undertaken by the United Nations Conference on Freedom of Information and of studying the problems arising out of the implementation of the resolutions adopted by the Conference. The Sub-Commission should therefore come to an agreement on its functions before taking up the other duties devolving upon it.

Mr. AZKOUL proposed that the items which Mr. Azmi had just enumerated should be considered as constituting not the whole but only a part of the agenda of the session. Mr. Azkoul then proposed that the first item (definition of the function of the Sub-Commission) which might give rise to fruitless debate should be deleted. The function of the Sub-Commission could not fail to be defined indirectly when the second part of the agenda was decided upon. Moreover, it would be advisable to refer the item concerning the implementation of the resolutions of the United Nations Conference on Freedom of Information to a later session, since those resolutions had not yet been put into effect.

Mr. BINDER said that two different interpretations of the Council's resolution had been presented. Mr. Geraud thought that the terms of reference of the Sub-Commission were defined in the recital of that resolution, whereas in reality they were defined in the operative part. Such an interpretation of the recital would lead the Sub-Commission too far astray. Furthermore, when the different items on the agenda were considered, it should of necessity take into account the work of the Geneva Conference. Mr. Binder again supported Mr. Azmi's draft agenda (E/CN.4/Sub.1/75).

Mr. GERAUD was surprised at Mr. Binder's interpretation of the Sub-Commission's terms of reference. Why should the recital be considered less important than the operative part? It was true that about twenty-five years earlier the Permanent International Court of Justice had decreed that the recital of an instrument merely **constituted a simple statement of intention, and created no legal obligation.** But in the matter under discussion it was not a

question of legal obligation. It was clear that the function of the Sub-Commission was to continue the work undertaken by the Conference.

In Mr. Geraud's view, furthermore, there was no divergency between the first paragraph of the recital and the operative part, sub-paragraphs (VI) and (IX) of which far from restricting the scope of the recital had rather a tendency to broaden it.

The Sub-Commission had at least to supervise if not to insist upon the implementation of those resolutions and to call attention, should the need arise, to shortcomings in their implementation. In view of those facts, Mr. Geraud did not understand why there was a desire to reduce the Sub-Commission's duties to the study of isolated questions of restricted scope.

Mr. ZONOV noted that there was very little difference between the agenda proposed by Mr. Azmi (E/CN.4/Sub.1/75) and that of the Secretariat (E/CN.4/Sub.1/SR 69). Mr. Zonov would prefer the Sub-Commission to take as its working document the provisional agenda drawn up by the Secretariat; if the whole of the session were devoted to the study of the first part of Mr. Azmi's draft agenda, which included questions only relating to procedure and methods of work, the sum total of the session's work would be negligible. More important work awaited the Sub-Commission; it was outlined in the document prepared by the Secretariat.

Mr. Zonov pointed out that the Sub-Commission had not been instructed to establish "continuous liaison" with information enterprises and professional organizations. Item 2 of Mr. Azmi's draft, which corresponded to point 6 of the Secretariat paper exceeded the provisions of resolution 197 (VII), sub-paragraph (b), in which the Economic and Social Council authorized the Sub-Commission to receive from information enterprises only communications concerning the precise items listed earlier in the same resolution. That item should therefore be deleted from the agenda.

Mr. Zonov likewise favoured the deletion of item 3 of Mr. Azmi's draft, corresponding to item 7 of the Secretariat paper. As he had pointed out before, the Sub-Commission was not seized of the resolutions of the United Nations Conference on Freedom of Information which had been referred to the Economic and Social Council by the General Assembly.

/Mr. Zonov

Mr. Zonov thought that by proceeding in that manner, through successive deletions, the Sub-Commission would see its true work emerge. Items 10, 11, 12 and 16 of the Secretariat document were the fundamental questions which it was important to take up as quickly as possible.

Mr. GANDHI thought that it would be best for the Sub-Commission to adopt the agenda proposed by Mr. Azmi which set forth a satisfactory classification.

To Mr. Gandhi, it was evident from Economic and Social Council resolution 197 (VIII) that the Sub-Commission's terms of reference would have whatever scope the Sub-Commission itself wished them to have. It was true that the Sub-Commission was not an executive body; it might, however, find itself subsequently entrusted with greater responsibilities when the Economic and Social Council had taken note of its work and new problems arose.

Mr. Gandhi proposed that the Sub-Commission should examine one by one the items proposed by Mr. Azmi in his draft agenda. The Commission would thus be drafting a three year work programme which it would obviously be free to modify if necessary.

Certain items might have to be omitted but nothing prevented their inclusion on the agenda, although they might subsequently be deleted. For example, item 3 of Mr. Azmi's draft might be deleted when the time came to consider it.

The CHAIRMAN thought that it would be advantageous for the Commission to hear the Secretariat's point of view before taking a decision.

Mr. HOGAN (Secretary of the Sub-Commission) emphasized that the Secretariat had encountered certain difficulties in drafting a provisional agenda due to the fact that it had been obliged to finish it by 19 April, at which date the General Assembly had not yet taken a decision on the questions relating to the work of the Sub-Commission. The provisional agenda could have been limited to the first four items. The Secretariat had thought it advisable, however, to include the items which had been expressly mentioned in the Sub-Commission's terms of reference.

/Consequently

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Consequently the Secretariat had thought it useful to include item 5, for, although it had not yet received any communication, it would like to have directives on how to implement the instructions which it would undoubtedly receive in the near future. With regard to item 6, the Commission was at liberty to decide on the type of liaison it wished to establish with information enterprises and professional organizations. At the time when the provisional agenda was drawn up, the Secretariat had been obliged to include item 7, which referred to the implementation of the resolutions of the Conference. Moreover, the Secretariat had thought it necessary to include item 8 since it was not the Secretariat but the Sub-Commission which could recommend the Economic and Social Council to request Governments to supply information. Lastly, the Secretariat was in need of instructions from the Sub-Commission concerning the remaining items on the provisional agenda.

With regard to the priority to be given to those questions, resolution 197 (VIII) of the Economic and Social Council provided that the Sub-Commission could adopt the order of priority which it thought fit.

Several documents were already available or would be available very shortly. For example, with regard to the barriers to the free flow of information, UNESCO had prepared a document which would be distributed to the members of the Sub-Commission. Moreover, the Secretariat was shortly to publish three volumes, the first being a compilation of the replies received from Governments to the questionnaire which had been sent them, the second containing additional information supplied by Governments, and the third a collection of extracts from international agreements on freedom of information.

Mr. WILLIAMS noted that several members favoured Mr. Azmi's draft. He therefore proposed that at its following meeting, the Sub-Commission should examine the first part of Mr. Azmi's draft item by item, and dispose as quickly as possible of everything relating to procedure and methods of work. Before beginning consideration of the second part of Mr. Azmi's draft, the Sub-Commission could have a preliminary discussion on the question of the order of priority and request the Secretariat to reclassify the items according to the order of priority established, indicating the documentation available for each item.

Mr. AZMI thought that Mr. Williams' proposal reconciled the various points of view and proposed that it should be put to the vote.

Mr. DEDIJER

Mr. DEDIJER noted that Mr. Azmi's draft differed from the Secretariat's proposal only in the classification of the questions. Since no explanations had been given of the reasons for the different classification, Mr. Dedijer preferred the Sub-Commission to adhere to the draft prepared by the Secretariat.

On the other hand, Mr. Dedijer drew the Sub-Commission's attention to the following problem: a vast amount of news circulated throughout the world; it was not its quantity which left anything to be desired, but rather its quality. It was thus advisable to study the measures to be taken against nazi or fascist propaganda, to improve the quality of news and to combat false news reports before attempting to ensure freedom of information.

The CHAIRMAN remarked that the document prepared by the Secretariat had been merely a suggestion, until Mr. Zonov, in proposing its adoption as the basic document, had made it a formal proposal. The Chairman thought that the Sub-Commission might find it useful to take Mr. Azmi's draft as its basic document.

Mr. ZONOV objected that the two documents should be dealt with on an equal footing and that the Sub-Commission should settle the question of which of the two it would adopt as its working document by a vote.

The CHAIRMAN put the following proposal to the vote: The Sub-Commission adopts as its working document the draft agenda presented by Mr. Azmi (E/CN.4/Sub.1/75).

That proposal was adopted by 10 votes to 2.

The meeting rose at 5.40 p. m.