

**ECONOMIC  
AND  
SOCIAL COUNCIL**

**CONSEIL  
ECONOMIQUE  
ET SOCIAL**

E/CN.4/Sub.1/15/  
19 May 1947

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON FREEDOM OF INFORMATION AND OF THE PRESS

Text of Statement made at Second Meeting of First Session  
of Sub-Commission on Freedom of Information and  
of the Press by Mr. Roberto Fontaina (Uruguay)

What has just been said by the representative of Czechoslovakia (document E/CN.4/Sub.1/16) (Interpretation from Spanish) is completely included in the work that has been assigned to this Sub-Commission. The Resolution of the Commission on Human Rights, which is set forth in document E/CN.4/Sub.1/11, on page 2 reads:

"The nuclear Commission further recommended that 'the function of the Sub-Commission, in the first instance, be to examine what rights, obligations, and practices should be included in the concept of freedom of information...'" That means that is the work we have to do here - that is to say, determine which are the rights, obligations, and practices which must be included in the idea of "freedom of the press."

On page 3 of the same document, the Secretary-General, when he listed the names of the representatives, in accordance with the wish of the Commission on Human Rights, repeated the same thought in paragraph (a): "In the first instance, to examine what rights, obligations, and practices should be included in the concept of freedom of information, and to report to the Commission on Human Rights on any issues that may arise from such examination." That means that is exactly the work we have to do, and it was stated by the representative of Czechoslovakia. We must do nothing but establish a uniform principle once and for all as to what is meant by "freedom of information"; that is to say, what are the limits of that freedom.

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That is why, although generally in agreement with what has just been stated by the representative of Czechoslovakia, I am not in agreement with the way in which he divides the work of this Sub-Commission - that is to say, first, that a declaration of principles should be made; secondly, the obligations which are involved; and thirdly, the rights. I think it should be done purely on a basis of determining the restrictions of that liberty. Anything that is not included in that limitation constitutes the carrying out of the rights. I think the simplest and easiest way of doing that - and I do not say we will be able to do it - is to try to bring about a uniformity which, if it were the desideratum, would be the universal law governing this problem.

Amongst the documents handed out to us, there are extracts from a number of the laws of different countries. We see, for example, how in general, although all profess the existence of freedom of the press and freedom of expression, all have more or less limited it. Some laws have limited that freedom; others have generalized it. For example, let us pick out a few at random. In document E/CN.4/Sub.1/10, an excerpt of Article 23 of (the Constitution of) Afghanistan reads as follows: "Publications and newspapers of Afghanistan, such as are not against religion, are under no restrictions save as provided by the special law relating to them...." These mean to say that in Afghanistan we already have a limitation on religions. In Article 32 of the Argentine Constitution, (and Article 14 as well), Article 32 reads as follows: "The federal Congress shall not enact laws that restrict the liberty of the press or that establish federal jurisdiction over it." Here in this law it is perfectly stated there is a total freedom of information, without any limits, which must, of course, be included in the Penal Code as well.

In Belgium, Article 18 of the Belgian Constitution states: "The press is free...." At the end of that Article, however, it says: "In case the writer is known and is a resident of Belgium, the publisher, printer or  
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distributor cannot be prosecuted." That means, if the writer is a foreigner or does not reside in Belgium, the prosecution will then be carried out against the publisher, the printer, or the distributor.

In Brazil, Article 141, paragraph 5, reads: "#5....The publication of books and periodicals shall not be dependent upon license from the public power. However, propaganda for war, or violent processes to subvert the political and social order, or prejudices of race or of class shall not be tolerated."

Undoubtedly, when the law is prepared, especially when the constitution of a country is drawn up, it is done with the best intention in the world. But when we are faced with a constitution that talks of the freedom of the press and at the same time includes a restriction that might be used by anybody, if he so wished, with evil intent, as in this case - "or violent processes to subvert the political and social order" - the matter is dangerously elastic.

The same situation exists in Colombia. Article 42, paragraph 1, states: "The press shall be free in times of peace; but responsible, in accordance with the law, when it may attack personal honour, the social order, or public tranquility."

In general, all the laws and all the constitutions of countries establish - and it cannot be any other way at all - freedom of the press as a fact; but all the constitutions, in accordance with their own laws, outline certain limits, certain differences. The difference is not in the way in which freedom is interpreted, but rather in the way of interpreting the length and scope to which that liberty may be permitted, and the restrictions to be imposed on that freedom.

Therefore, if we manage to arrive at an exact limitation of that liberty, naturally - "naturally", I repeat - we must arrive at a universal definition of what "freedom of the press" means. I do not think we will arrive at that end by making speeches. It has been stated this morning, and repeated this

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afternoon by the representative of Czechoslovakia that those words are very nice words and declarations of very "highfalutin" language, but they have no other value.

I think that if we want to do anything practical about this, we must try to create uniformity on the legal and juridical meaning of the term "freedom of information and of the press." It would be humanly impossible not only for us, but for the collective acceptance of our points of view and the fruit of our labours, to arrive at that universal law. That is why I insist that, by travelling on the inverse road, it might be possible for us to arrive at a uniformity of ideas only on the restrictive points of that liberty which we are discussing, and that thereby we must automatically arrive at a universal concept of what "freedom of the press" means. Thus we can accept, as has been stated in the proposal of the United States and as has been mentioned by the representative of Canada, the fact that there are differences among countries who attack the concept of freedom of expression, either directly or surreptitiously.

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