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CONSEIL DE L'EUROPE

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EUROPEAN COMMISSION OF HUMAN RIGHTS
PREPARATORY WORK ON ARTICLE 10
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Information Document

Prepared by the Secretariat of the Commission

1. Article 10 of the European Convention on Human Rights is worded as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

"2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals,

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for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

2. The Universal Declaration of Human Rights, adopted on 10th December, 1948, by the General Assembly of the United Nations, includes an Article 19, worded as follows:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

3. In August 1949, when the Consultative Assembly of the Council of Europe had obtained the inclusion in its Agenda of "measures for the fulfilment of the declared aim of the Council of Europe, in accordance with Article 1 of the Statute, in regard to the safeguarding and further realisation of Human Rights and Fundamental Freedoms", M. Teitgen, the Rapporteur, laid before the Committee on Legal and Administrative Questions certain proposals including, in particular, this passage (1):

"The Convention and the procedure to be determined later by the Committee will guarantee the fundamental rights and freedoms listed below to every person residing within the metropolitan territory of a Member State:

.....

The right not to be molested on account of his opinions and the freedom to express them by word of mouth and through the press." (Doc. A.116) (2).

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(1) Translation; original English text unavailable.

(2) The drafts of the European Movement, by which the Consultative Assembly was considerably influenced (cf. Official Report of the Consultative Assembly, 1949, II, p. 410), provided for the guarantee of "freedom of speech and of expression of opinion generally". (Doc. INF/2/E, February 1949, and Doc. INF/5/E/R, Article 1 (d), p.6, June 1949).

At the meeting of the Committee on 30th August, 1949, M. Rolin (Belgium) suggested replacing this text by the following paragraph:

"Freedom of opinion and expression, in accordance with Article 19 of the Declaration of the United Nations".

The Committee accepted the amendment by 16 votes to one with one abstention (Doc. A.167, p.2).

4. Article 2, paragraph 6, of the draft submitted to the Consultative Assembly by the Committee on 5th September, 1949, was worded as follows:

"In this Convention, the Member States shall undertake to ensure to all persons residing within their territories:

.....

(6) freedom of opinion and expression, in accordance with Article 19 of the United Nations Declaration." (1)
(Doc. AS (1) 77, p. 204; cf. also Doc. A.290, p. 10) (1)

This text did not give rise to any particular discussion in the Assembly and was embodied without change in the Assembly's Recommendation of 8th September, 1949, (Doc. AS (1) 108, Article 2, para. 6, p. 262).

5. The Committee of Ministers of the Council of Europe then submitted the Assembly's Recommendation to a Committee of Experts on Human Rights which it had decided to convene (November, 1949).

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(1) In Doc. A.290 the passage read: "All Member States signatories to the Convention, shall bind themselves to ensure to all persons residing within their territories:

.....

6. Freedom of opinion and expression, in accordance with Article 19 of the Declaration of the United Nations."

The Committee's terms of reference stated that: "due attention should be paid to the progress which had been achieved in this matter by the competent organs of the United Nations", (Doc. AS (1) 116, para. 6, pp. 288 and 289).

6. The "draft International Covenant on Human Rights" prepared by the United Nations Commission on Human Rights at its 5th session held at Lake Success from 9th May to 20th June, 1949, provided for an article 17 devoted to freedom of opinion and expression. The Commission decided, however, by 12 votes to 3 with one abstention, to postpone consideration of this Article until its 6th session.

At the time, the Commission had before it a number of proposals one of which had been submitted by the French representative and one by the United Nations Conference on Freedom of Information.

The first was worded as follows:

"1. Speech is free. Every person shall be free to express and publish his ideas in any way he chooses.

2. Every person shall be free to receive and disseminate information of all kinds, including facts, critical comment and ideas, by the medium of books, newspapers, oral instructions or in any other manner.

3. The freedom referred to in the preceding paragraphs may be subject only to the restrictions, penalties or liabilities provided by law for the protection of public order, national security, good morals, respect for law and the reputation or rights of other persons", (Doc. E/1371, p.21).

The text submitted by the United Nations Conference on Freedom of Information provided that:

"1. Every person shall have the right to freedom of thought and the right to freedom of expression without interference by governmental action; these rights 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.

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2. The right to freedom of expression carries with it duties and responsibilities and may, therefore, be subject to penalties, liabilities or restrictions clearly defined by law, but only with regard to:

- (a) Matters which must remain secret in the interest of national safety;
- (b) Expressions which invite 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) Infringements of literary or artistic rights;
- (g) Expressions about other persons, natural or legal, which defame their reputations or are otherwise injurious to them without benefiting the public;
- (h) The systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples and States.

A State may establish on reasonable terms a right to reply or a similar corrective remedy.

3. 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.

4. Nothing in this Article shall be deemed to affect the right of any State to control the entry of persons into its territory or the period of their residence therein", (1) (Doc. E/1371, pp. 21 and 22).

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- (1) The Drafting Committee for the Covenant decided to forward this text to the Commission on Human Rights together with a list of 25 possible additional limitations, (Doc. E/1371, pp. 22 to 24).

7. The Secretariat-General of the Council of Europe had prepared for the Committee of Experts on Human Rights a "Preparatory Report on the draft Convention of Collective Guarantee of Human Rights". In Part II of the Report, devoted to a "comparison between the draft International Covenant on Human Rights and the draft of the Consultative Assembly", there were the following comments on Article 17 of the draft Covenant of 1949:

"The draft French text under this heading repeats, with some textual differences, Article 19 of the Universal Declaration to which paragraph 6 of Article 2 of the Resolution" (of the Consultative Assembly) "refers. However, it is worth noting the very broad concept of the word 'information' contained in the French draft. Moreover, the subject of this Article (right to hold an opinion without interference) is differently defined in the two texts, bearing in mind Article 6 (1) of the Resolution. It remains for the Committee of Experts to make a decision on the enumeration of the consequences and exceptions of this liberty, which is contained in the text of the Geneva Conference" (on Freedom of Information) "and in that of the Commission of Human Rights.

It should be stated that the study of this Article was finally postponed by the Commission on Human Rights pending the decision of the UNO Assembly on the Convention of the freedom of information" (Doc. B.22, p.20).

8. The Committee of Experts of the Council of Europe was also called upon to consider the "Comments of the Government of the United Kingdom received by the Secretary-General" (of the United Nations) "on 4th January, 1950".

In this document, the British Government expressed its views on the form which should be given to Article 17 of the draft Covenant:

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- (1) General clause of limitation (recognition of and respect for the rights and freedoms of others; just requirements of public morality, order and security in a democratic society).

"1. With regard to the questions suggested for answer by the representative of China, (1) His Majesty's Government in the United Kingdom consider that there should in any event be an article on Freedom of Information in the Covenant on Human Rights. In this connection the members of the Commission will be aware that the General Assembly, in its Resolution of 20th October, 1949, recommended that such an article should be included. His Majesty's Government see no reason for such an article being different in form to other articles in the Covenant.

2. It will be observed that paragraph 1 of the text of Article 17 submitted by the United Nations Conference on Freedom of Information resembles Article 1 (a) of the draft Convention on Freedom of Information (Document A/C.3/518). Since, however, the General Assembly in its Resolution noted above recommended that the Commission shall take into account the work done on the draft Convention on Freedom of Information at the Third and Fourth Sessions of the General Assembly, His Majesty's Government consider that the text proposed originally by the United Nations Conference on Freedom of Information should be modified to bring it into line with the text adopted for Article 1 of the draft Convention by the Third Committee of the Assembly.

3. With regard to paragraph 2 of the article proposed by the Conference, His Majesty's Government support wholeheartedly the proposal to enumerate the specific limitations on the right to freedom of information which are to be permitted. They do not, however, consider that the list suggested by the Conference is in all respects satisfactory. His Majesty's Government therefore propose for inclusion in the Covenant the following text:

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(1) The representative of China had suggested that Governments might be asked to consider whether an article on Freedom of Information should be included in the draft Covenant even though there might be an independent Convention on Freedom of Information and, if so, what form such an article should take (Doc. E/1371, p.21).

'1. Every person shall have the right to freedom of thought and the right to freedom of expression without governmental interference; these rights shall include freedom to hold opinions, to receive and impart information and ideas, without governmental interference, regardless of frontiers, either orally, in writing or in print, in the form of art, or by duly licensed visual or auditory devices.'

'2. The exercise of these freedoms carries with it duties and responsibility and may therefore be subject to certain penalties, liabilities and restrictions provided by law, which are necessary in the interests of national security, for prevention of disorder or crime, for the protection of public safety, health or morals, for the protection of the reputations or rights of other persons, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.' (1)

4. As for the other limitations noted by the Drafting Committee, His Majesty's Government consider that, insofar as they are reasonable limitations, they are provided for in the text of paragraph 2 proposed above", (Council of Europe ref. Doc. A.770, pp. 5 and 6, and U.N. ref. Doc. E/CN 4/353/Add. 2).

9. At the first meeting of the Committee of Experts on Human Rights (Strasbourg, 2nd to 8th February, 1950), two amendments were submitted by MM. Ustun and Lutem (Turkey) and by M. Salén (Sweden) respectively.

The first amendment proposed wording paragraph 6 of Article 2 of the Consultative Assembly's draft as follows:

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(1) Note the similarities between this text and that submitted by the United Nations Conference on Freedom of Information (quoted above, pp. 4 and 5).

"Freedom of opinion and expression, in accordance with Article 19 of the United Nations Declaration, to the extent that this can be reconciled with the principles set forth in paragraph 3 of the Preamble to the Statute of the Council of Europe" (1) (Doc. A. 775).

The second amendment proposed supplementing paragraph 6 by a second sentence worded as follows:

"These freedoms can only be subjected to the restrictions, sanctions and responsibilities defined by law in the interest of public order, national security and the good functioning of public administration and justice, as well as for the safeguarding of the good traditions and respect for the freedom of others" (Doc. A.777).

10. A Sub-Committee was then instructed to undertake a preliminary examination of Amendments relating to the various provisions of the Assembly's draft, including the Amendments quoted above. The Sub-Committee considered

"that it was difficult to approve the Amendment to paragraph (6) of Article 2, as proposed by M. Ustun.

"This Amendment relates to a restriction on freedom of opinion and expression which would be too extensive.

"M. Ustun explained that he proposed this Amendment on account of the fact that there is in Turkey a law which forbids the diffusion of propaganda on extremist ideas.

"The Sub-Committee was of the opinion that if, in any country, there exist special circumstances justifying certain exceptional restrictions on the freedom in question, the right to apply these restrictions is covered by Articles 4 and 6 (2).

(1) Namely, "individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy".

(2) Article 4 of the Assembly's draft provided that every Member State, signatory to the Convention, should in principle be entitled to establish the rules by which the guaranteed rights and freedoms should be organised and protected within its territory. (For Article 6, see above p. 6, footnote (1).

"The Sub-Committee agreed that this should be clearly explained in the statement of reasons" (Doc. A. 802, p.2)

11. The preliminary draft Convention prepared by the Committee of Experts at its first meeting provided, in Article 2, para. 6 which was almost identical with Article 19 of the Universal Declaration, (1), that:

"6. Everyone has the right of freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers" (Doc. A.833, p.3; of. also Doc. A.809, Article 3, para. 6, pp. 4 and 5).

The preliminary draft Report of the Committee of Experts to the Committee of Ministers (Doc. CM/WP 1 (50) 1) contained no special remarks on this text.

12. At the second meeting of the Committee of Experts (Strasbourg, 6th to 10th March, 1950), the United Kingdom representative suggested replacing Article 2, para. 6, of the preliminary draft by an Article 11 worded as follows (2):

"Everyone shall have the right to freedom of thought and (3) to freedom of expression without governmental interference; these rights shall include freedom to hold opinions and to receive and impart information and ideas without governmental interference regardless of frontiers, either orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices.

"The exercise of these freedoms carries with it duties and responsibilities and may therefore be subject to such penalties, liabilities and restrictions as are prescribed by law and are necessary in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputations or rights of other persons, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary" (Doc. CM/WP 1 (50) 2, p.5).

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- (1) Quoted above, p.2 the differences are underlined.
 - (2) The alterations made in the text proposed by the British Government to the United Nations Commission on Human Rights (quoted above p.8) are underlined.
 - (3) Deletion of "the right".

This Amendment clearly bore a close resemblance to that submitted by the British Government to the United Nations Commission on Human Rights in January, 1950. (1)

13. The British Amendment was submitted to a Drafting Committee consisting of Sir Oscar Dowson and Mr. Le Quesne (United Kingdom), M. Dons Moeller (Denmark) and M. Salén (Sweden). The Committee reworded it as follows(2):

"1. Everyone shall have the right to(3) freedom of expression without governmental interference; these rights shall include freedom to hold opinions and to receive and impart information and ideas without governmental interference regardless of frontiers, either orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices.

"2. The exercise of these freedoms, since it carries with it duties and responsibilities (4), may(5) be subject to such penalties, liabilities and restrictions as are prescribed by law and are necessary in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputations or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary" (Doc. CM/WP 1 (50) 10, pp 3 and 4)

14. The draft Convention submitted to the Committee of Ministers by the Committee of Experts at the end of its work contained two Articles corresponding to present Article 10 of the Convention.

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(1) Quoted above, p.8.

(2) The alterations made in the British Amendment (quoted above p.10) are underlined.

(3) deletion of "freedom of thought and to".

(4) deletion of "and".

(5) deletion of "therefore".

Article 2, para 6, in Alternatives A and A/2 (method of enumeration of rights and freedoms to be safeguarded) was almost (1) an exact repetition of Article 2, para 6 (2), of the preliminary draft of the Committee of Experts and of Article 19 (3) of the Universal Declaration [Doc. CM/WP 1 (50) 15, appendix, p.2; cf. also Doc. CM/WP 1 (50) 14, Alternative B, Article 2, para. 6, p.9/

On the other hand, Article 10 in Alternatives B and B/2 (method of precise definition of rights and freedoms to be safeguarded) closely followed (4) the wording of the Article 11(5) adopted by the Drafting Committee [Doc. CM/WP 1 (50) 15 appendix, p.9; cf. also Doc. CM/WP 1 (50) 14, Alternative A, Article 10, pp.5 and 6/

The report of the Committee of Experts contained the following explanation of Article 10, para. 2, of Alternatives B and B/2:

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- (1) "Right to freedom", as in the Universal Declaration.
"To hold opinion", as in the preliminary draft.
 - (2) Quoted above p.10.
 - (3) Quoted above p.2.
 - (4) With one exception in para.(1): "this right", instead of "these rights".
 - (5) Quoted above, p.11.

"The permission accorded in this paragraph to the imposition of certain restrictions in the interests of territorial integrity was accepted by the Committee on the clear understanding that it did not permit a restriction on the rights of national minorities to advocate their views by democratic means (see comments on Article 6 of Alternatives A and A/2)" (1) Doc. CM/WP 1 (50) 15, p.227.

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(1) The comments on Article 6 (general clause of limitation) of alternatives A and A/2 included the following passage:

"The Committee added to the number of higher interests, the demands of which might justify the limitation of Human Rights, two further restrictions:

- (a) territorial integrity;
- (b) the smooth working of administration and justice.

"The first was added on the proposal of the Turkish representative, in order to make provision for the need of States to be able to defend themselves against all activities which might lead to the disintegration of the nation.

"The permission accorded in this paragraph to the imposition of certain restrictions in the interests of territorial integrity, was accepted by the Committee on the clear understanding that it did not permit a restriction on the rights of national minorities to press their views by democratic means.

"The Turkish representative emphasised that his proposal had no connection with the question of the rights of national minorities, a question which, moreover, would be outside the scope of the Convention" Doc. CM/WP 1 (50) 15, p. 177.

The Committee of Experts had agreed that it was not competent to choose between Alternatives A, A/2, B and B/2, since such a choice "depended on considerations of a political character" [Doc. AS (2) 8, para. 58, p.571]

15. In these circumstances, the Committee of Ministers decided at its Third Session (Strasbourg, 30th March to 1st April, 1950) "to convene a meeting of Senior Officials, who, on the instruction of their Governments, would have the task of preparing the ground for the Ministers' decision from the political point of view" [Doc. AS (2) 8, para. 59, p. 571]

16. The Conference of Senior Officials (Strasbourg, 8th to 17th June, 1950) succeeded in "amalgamating Alternatives A and B of Section 1 of the Committee of Experts' draft Convention", while adopting Alternative B (method of precise definition) as the basis of its work. [Doc. CM/WP 4 (50) 19, p. 13]

The "new draft of Alternatives B and B/2" contained an Article 11 worded as follows⁽¹⁾:

"(1) Everyone shall have the right to freedom of expression⁽²⁾; this right shall include freedom to hold opinions and to receive and impart information and ideas without governmental interference, regardless of frontiers, either orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices.
"(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such penalties, liabilities and restrictions as are prescribed by law and are necessary in the interests of national security (territorial integrity)⁽³⁾, or public safety, for the prevention of disorder or crime, for the

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(1) An alteration made in the text of Article 10 of Alternatives B and B/2 of the Committee of Experts' draft Convention (see above, p.11 and p.12, footnote (4)) is underlined.

(2) Deletion of "without governmental interference".

(3) These two words are now placed in brackets.

protection of health or morals in a democratic society, (1) for the protection of the reputations or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary" [Doc. CM/WP 4 (50) 9, p. 5]

Agreement was finally reached on an Article 10 worded as follows: (2)

"(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers, either orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices.

"(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such penalties, liabilities, and restrictions as are prescribed by law and are necessary in a democratic society (3), in

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- (1) According to the Report of the Conference [Doc. CM/WP 4 (50) 19, p. 13], the reference to a "democratic society" was introduced into Article 10, as well as Articles 8, 9 and 11, in order to "make Alternative B more acceptable to the supporters of Alternative A". Indeed, Article 6 (general clause of limitation of rights and freedoms) of the Consultative Assembly's draft [Doc. AS (I) 108] and of Alternative A of the Committee of Experts' Draft [Doc. CM/WP 1 (50) 14 and 15 appendix] contained a similar reference to this concept.
 - (2) The alterations made in Article 11 of the "new draft of Alternatives B and B/2" (quoted above, pp. 14 and 15) are underlined.
 - (3) Note the displacement of these four words.

the interests of national security, territorial integrity(1), or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputations or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." (Doc. CM/WP 4 (50) 19 appendix, p.6; cf. also Doc. CM/WP 4 (50) 16 appendix, Article 10, pp. 6 and 7).

The Report of the Conference of Senior Officials to the Committee of Ministers contained the following comments on paragraph 2 of this text:

"The Turkish delegate insisted that the words 'territorial integrity' be retained in the text of this paragraph. In this connection, the Danish delegate repeated the reservations which he had made during the meeting of the Committee of Experts and according to which it was well understood that no restriction should be introduced which would interfere with the right of national minorities to give expression to their aspirations by democratic means" [Doc. CM/WP 4 (50) 19, p.16/

17. After the conclusion of the work of the Conference of Senior Officials, the United Kingdom delegation proposed the following alterations in the punctuation of the English text of paragraph 2 of Article 10:

"Delete commas after 'democratic society' and 'Territorial integrity'" (Doc. A. 1690, p.3).

18. The report and draft Convention adopted by the Conference of Senior Officials were laid before the Committee of Ministers of the Council of Europe, which agreed on 3rd August, 1950, that a Committee of Governmental Experts would meet next day to revise the text of the draft having regard to proposals received and the documentation already available (Documents of the Committee of Ministers, 5th session, p.26).

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(1) These two words are no longer in brackets. In Doc. CM/WP 4 (50) 16 appendix (first draft of the Conference) the brackets were retained.

19. The Irish Government requested:

"That Article 10 (2) of the present draft be amended to stipulate that no restriction should be imposed on the right of national minorities to give expression to their aspiration by democratic means" [Doc. CM I (50) 2, p.27]

20. On 7th August, 1950, the Committee of Ministers agreed upon the text of a "draft Convention of Protection of Human Rights and Fundamental Freedoms", which it decided to send to the Consultative Assembly for opinion.

Article 10 of the draft was worded as follows(1):

"(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers(2).

This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

"(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, liabilities, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation (3) or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary" [Doc. CM (50) 52, p.6; Cf. also Doc. AS (2) 11, Art. 10, pp.606 and 607, and Doc. A.1937, Art. 10, p. 67]

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- (1) The alterations made in Art. 10 of the draft Convention adopted by the Conference of Senior Officials (quoted above p.15) are underlined.
 - (2) Deletion of the words "either orally, in writing or in print, in the form of art or by duly licensed visual or auditory devices".
 - (3) "Reputations" in Doc. CM(50) 52.

21. In its Recommendation of 25th August, 1950, regarding the draft Convention for the Protection of Human Rights and Fundamental Freedoms, the Consultative Assembly proposed no alterations in Article 10, which received no particular mention during the debate [Doc. AS (2) 104, Art. 10, p. 1033/7(1)]

22. On 3rd November, 1950, a Committee of Legal Experts carried out a final examination of the text of the Convention and introduced a number of corrections of form and translation [Doc. CM/Adj. (50) 3 Rev., para. 6/7]

Two alterations were made in the English text of Article 10 (2), which thus received its final form, confirmed next day by the signing of the Convention.

A study of the preparatory work on the Convention reveals certain affinities between Article 10 of the Convention and Article 19 of the Draft International Covenant on Civil and Political Rights (3).

The Secretariat of the Commission has accordingly deemed it useful to attach to this document the relevant extract from the Annotation on draft Covenants, prepared by the Secretary-General of the United Nations in 1955 at the request of the United Nations General Assembly (Doc. A/2929, pp. 144 to 154, Appendix) (4).

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- (1) The words "the reputation or", however, were mistakenly omitted in para 2.
 - (2) Para.1: "public authority and regardless...", instead of "public authority regardless"
Para.2: "conditions" instead of "liabilities"
 - (3) Article 17 until 1949; Article 14 in 1950 and 1951; Article 16 in 1952; Article 19 since 1953.
 - (4) On this subject, see Doc. DH (56) 4. pp. 10 and 11.

A P P E N D I X

ARTICLE 19

Freedom of Opinion and Information

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in the foregoing paragraph carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall be such only as are provided by law and are necessary,
 - (1) for respect of the rights or reputations of others,
 - (2) for the protection of national security or of public order, or of public health or morals.

119. While the Commission on Human Rights was drafting this article the United Nations was also engaged in drafting a convention on freedom of information, a convention on the gathering and international transmission of news and a convention concerning the institution of an international right of correction.^{44/} The question was raised whether, since a separate convention on freedom of information was being

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^{44/} The United Nations Conference on Freedom of Information, which met in 1948, prepared a draft convention on freedom of information, a draft convention on the gathering and international transmission of news and a draft convention concerning the institution of an international right of correction (see the Final Act of the Conference, E/Conf. 6/79).

At its third session the General Assembly in resolution 277 (III) of 13th May 1949, approved a draft convention on the international transmission of news and the right of correction, but resolved that the draft convention should not be open for signature until the General Assembly

(footnote continued on following page)

drafted, the covenant on human rights should include an article on freedom of expression and information at all. The consensus of opinion 45/ was that the covenant could not ignore freedom of information which the General Assembly, in resolution 59 (I), had declared to be "a fundamental human right" and the "touchstone of all the freedoms to which the United Nations is consecrated". Furthermore, the observation was made that the covenant, as a general instrument on human rights, could serve as a legal foundation on the basis of which a series of conventions on particular rights could be formulated.

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44/ (footnote continued from preceding page)

had taken definite action on the draft convention on freedom of information. At its fourth session the General Assembly, in resolution 313 (IV) of 20th October 1949, decided to postpone further action on the draft convention on freedom of information pending receipt of the draft international covenant on human rights. By resolution 426 (V) of 14th December 1950 the General Assembly appointed a Committee to prepare a draft convention on freedom of information, taking into consideration the draft approved by the United Nations Conference on Freedom of Information and the article on freedom of expression and information in the draft covenant on human rights and recommended that the Economic and Social Council consider the report of the Committee and, if it thought fit, convene a conference of plenipotentiaries with a view to the framing and signature of the convention. The Committee met in early 1951 and prepared a draft convention on freedom of information (E/AC.42/7). In resolution 387 A (XIII) of 1st September 1951 the Economic and Social Council transmitted to the General Assembly its decision not to convene a plenipotentiary conference. At its 6th, 7th and 8th sessions the General Assembly did not study the draft convention on freedom of information article by article (see resolutions 541 B (VI) of 4th February 1952, 631 (VII) of 16th December 1952 and 736 A (VIII) of 28th November 1953). However, at its 7th session it adopted a Convention on the International Right of Correction and opened it for signature (resolution 630 (VII) of 16th December 1952). In resolution 840 (IX) of 17th December 1954, the General Assembly requested the Economic and Social Council to formulate recommendations concerning the draft convention on freedom of information. On 25th May 1955 the Council adopted resolution 574 C (XIX) recommending that the General Assembly "consider the draft convention at its twelfth session in the hope that conditions will be more favourable at that time."

45/ E/CN.4/SR.37, 120, 170, 171.

Freedom of opinion^{46/}

120. The first drafts of the article contained a clause to the effect that every person should have the right to freedom of opinion and expression without interference by governmental action. As the debate on this clause progressed, it became clear that freedom of opinion and freedom of expression were not of the same character: the former was purely a private matter, belonging as it did to the realm of the mind, while the latter was a public matter, or a matter of human relationship, which should be subject to legal as well as moral restraint. Although it was recognised that a person was invariably conditioned or influenced by the external world, it was generally agreed that no law could regulate his opinion and no power could dictate what opinion he should or should not entertain. The decision was made, therefore, to treat the right to freedom of opinion separately from the right to freedom of expression.

121. Originally, the English version of the first paragraph read: "Everyone shall have the right to freedom of opinion without interference"; this was later changed to read: "Everyone shall have the right to hold opinions without interference". The French version was "nul ne peut être inquiété pour ses opinions". It was pointed out that the English and French texts corresponded neither in substance nor in style.

122. As originally proposed, the phrase "without interference" was followed by the phrase "by governmental action". There were two views regarding this point. One was that the article was intended to protect the individual only against governmental interference. The other view was that the article should protect the individual against all kinds of interference.

123. The question was raised whether there was any distinction between "freedom of opinion" in this article and "freedom of thought" in the preceding article and, if so, in what respect or to what extent. One comment was to the effect that the words "thought" and "opinion", though not identical, were very close to each other in meaning; another that the two words were not mutually exclusive but complementary to each other; a third that "freedom to hold any opinions without interference" was a truism and therefore superfluous.

^{46/} E/CN.4/SR.162-67, 200, 320-22; E/2256, para. 239;
A/C.3/SR.300, 415.

AppendixFreedom of expression ^{47/}

124. The general principle that "everyone shall have the right to freedom of expression" was not in itself a controversial issue. Differences of opinion arose on the precise scope and substance of freedom of expression.

125. The first question concerned the elements which constituted freedom of expression. In paragraph 2 of the article it was provided that freedom of expression "shall include freedom to seek, receive and impart information and ideas of all kinds...". Whether the act of seeking or receiving information was an act of "expression" did not appear to have been carefully examined. As to the objects of the verbs "to seek, receive and impart", various formulations were proposed: "information and ideas", "facts and ideas", "information of all kinds including facts, critical comment and ideas". A compromise formulation "information and ideas of all kinds" was adopted. Furthermore, the right to freedom of expression was not to be limited within the confines of any political or territorial entity; it was to be exercised "regardless of frontiers".

126. The question of the media through which the right to freedom of expression might be exercised was essentially a question of drafting although one point of substance was involved. Various wordings were suggested: "Either orally, by written or printed matter, in the form of art, or by legally operated visual and auditory devices"; "either orally, in writing or in print, in the form of art, or by duly licensed visual or auditory devices"; "through speech, press, art or any other media". The clause "duly licensed visual or auditory devices" and, to a lesser extent, the clause "legally operated visual or auditory devices" were objected to on the grounds that they were susceptible of arbitrary interpretation and application which might throttle channels of communication. The text eventually adopted was a compromise of the several versions. It read: "Either orally, in writing or in print, in the form of art, or through any other media of his choice".

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Limitations clause

127. Proposals were made to stipulate that the right to freedom of expression "carries with it duties and responsibilities...". Those who opposed the proposals contended that the general purpose of the covenants was to set forth civil and political rights and to guarantee and protect them rather than to lay down "duties and responsibilities" and to impose them upon individuals. Furthermore, they contended that, since each right carried with it a corresponding duty and since in no other article was the corresponding duty of any right set out, the present article should not be an exception. Those supporting the proposals were of the opinion that freedom of expression was a precious heritage as well as a dangerous instrument, and they maintained that, in view of the powerful influence the modern media of expression exerted upon the minds of men and upon national and international affairs, the "duties and responsibilities" in the exercise of the right to freedom of expression should be specially emphasized. The clause that the right to freedom of expression "carries with it duties and responsibilities" was adopted, with the addition of the word "special" before "duties and responsibilities".

128. There were two schools of thought on the question of how the limitations or restrictions should be written. One school was of the opinion that the limitations clause should be a brief statement of general limitations, the other school maintained that it should be a full catalogue of specific limitations. Consequently, several texts of a general clause were proposed while at the same time more than 30 specific limitations were suggested.

129. One proposal was that the right to freedom of expression might be subject to restrictions with regard to:

- (a) Matters which must remain secret in the interest of national safety;
- (b) Expressions which invite persons to alter by violence the system of government;

48/ E/CN.4/AC.1/SR.26; E/CN.4/SR.162-167, 320-322; E/CN.4/82/Add.4, 8; 220, 528 and Add.1, 532; E/CN.4/L.125, 144/Rev.1, 156/Rev.1, 192, 193; E/CONF.6/79, Annex B; E/2256, para.242, 243; E/L.68; A/C.3/SR.290.

- (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) Infringements of literary or artistic rights;
- (g) Expressions about other persons, natural or legal, which defame their reputations or are otherwise injurious to them without benefiting the public;
- (h) The systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples and States.

Other suggestions included: disclosure of professional secrets; disclosure arising out of marital or professional relations; expressions about public authorities and high personages; communications with foreign Governments; blasphemous or treasonable statements; etc.

130. The advocates of a brief clause argued that a catalogue of specific limitations might perhaps be included in a convention on freedom of information ^{49/} but would certainly be too long to be included in an article in the covenant; that no catalogue could ever be sufficiently exhaustive to cover all situations, in view of the divergent political and legal systems existing in the world today; and that the only way to draft a limitations clause was to find a workable common formula. Those in favour of specific limitations insisted that a general formula was susceptible of arbitrary interpretation and application; that if the covenant were to be a satisfactory legal instrument permissible restrictions on freedom of expression should be set forth in precise unequivocal language; and that a wider degree of freedom would be ensured where limitations were enumerated carefully and in detail.

^{49/} See Article 2 of the draft convention on freedom of information prepared by the United Nations Conference on Freedom of Information (E/CONF.6/79) and Article 2 of the draft convention on freedom of information prepared by the General Assembly Committee on the Draft Convention on Freedom of Information (A/AC.42/7).

131. In the course of debate several texts of a general clause were proposed, to which several series of amendments containing specific limitations were submitted. A general clause was adopted which provided that the exercise of the right to freedom of expression "may be subject to certain restrictions, but these shall be such only as are provided by law and are necessary, (1) for respect of the rights and reputations of others, (2) for the protection of national security, or of public order, or of public health or morals". The words "penalties" and "liabilities" which were originally placed before the word "restrictions" were deleted.

132. The debate on the "public order" clause of this article paralleled that of the preceding article. One proposal was to replace the "protection of public order" by the "prevention of public disorder"; another proposal was to modify "public order" by "in a democratic society". Neither was accepted. It might be noted that during the debate the term "public order" was interpreted as covering the rights of a State to license media of information and to regulate the importation of information material.^{50/}

133. In addition to the general clause certain restrictions of a specific character were considered. For instance, it was proposed that freedom of expression should be subject to such restrictions as were necessary "for preventing the disclosure of information received in confidence" and "for ensuring the fair and proper conduct of judicial proceedings". Although there was little objection in principle to these proposals, they were not adopted because there was no majority in favour of listing specific limitations.

134. It was further proposed that freedom of expression should not be "exploited for war propaganda, for incitement to hatred among peoples, for racial discrimination and for the dissemination of slanderous rumours".^{51/} Again it was proposed that freedom of expression should be subject to such

^{50/} For general comments on such expressions as "public order", "national security" or "public safety" and on the desirability of adopting a uniform limitations clause for articles 18, 19, 20 and 21, see paragraphs 112-114 of the annotation under article 18 above.

^{51/} An amendment was submitted during the first reading of the draft covenants at the ninth session of the General Assembly proposing the deletion of article 26 on prohibition of advocacy of national, racial or religious hostility and the insertion in this article of a provision on the question (GA (IX), a.i.58, A/C.3/L.413).

restrictions as were necessary "for the maintenance of peace and good relations among States". These and other similar proposals were rejected on the grounds that they were not susceptible of precise interpretation and that, furthermore, they might justify the establishment of a system of censorship

135. The question was raised whether freedom to seek and freedom to receive information should be subject to the same restrictions as freedom to impart information, and whether they should be subject to any restrictions at all. On this point, however, no definite understanding appeared to have been established

The question of censorship 52/

136. Proposals were made that "prior censorship of the press should be explicitly banned" and that "previous censorship of written and printed matter, the radio and news reels should not exist". 52/ No such proposals were adopted, for it was thought that paragraph 2 of the article already guaranteed the right to seek, receive and impart information, regardless of frontiers, through all media of communication, and that the restrictions in paragraph 3 were not to be understood as authorising censorship. There was all the difference in the world, it was said, between a system of censorship and a reminder to the journalist of his duties and responsibilities and of the limitations which might be placed upon him in the exercise of the right to freedom of expression.

Obstacles to the free flow of information 54/

137. There were two proposals relating to economic, financial and other aspects of the problem of freedom of information. One proposal was that "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". Another proposal was that "nothing in

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52/ E/CN.4/SR.320; E/CN.4/82/Add.2; E/600, Annex B, Part II;
A/C.3/SR.416.

53/ Attention is drawn to Article VII of the draft convention on the International transmission of news and the right of correction as approved by GA res 277 C (III). This article, which was based on Article 4 of the draft convention on the gathering and international transmission of news, prepared by the United Nations Conference, dealt with the question of censorship in peacetime.

54/ E/CN.4/SR.163, 165; E/CN.4/80, 432, 438/Rev.1, 440;
E/Conf.6/79, Annex B.

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this article shall affect the right of any State party to this covenant to take measures which it deems necessary in order to bring its balance of payments into equilibrium". These proposals were rejected mainly on the grounds that they dealt with temporary situations or technical problems, rather than the right to freedom of expression itself, and should not, therefore, be included in a universal instrument of a lasting character. 55/

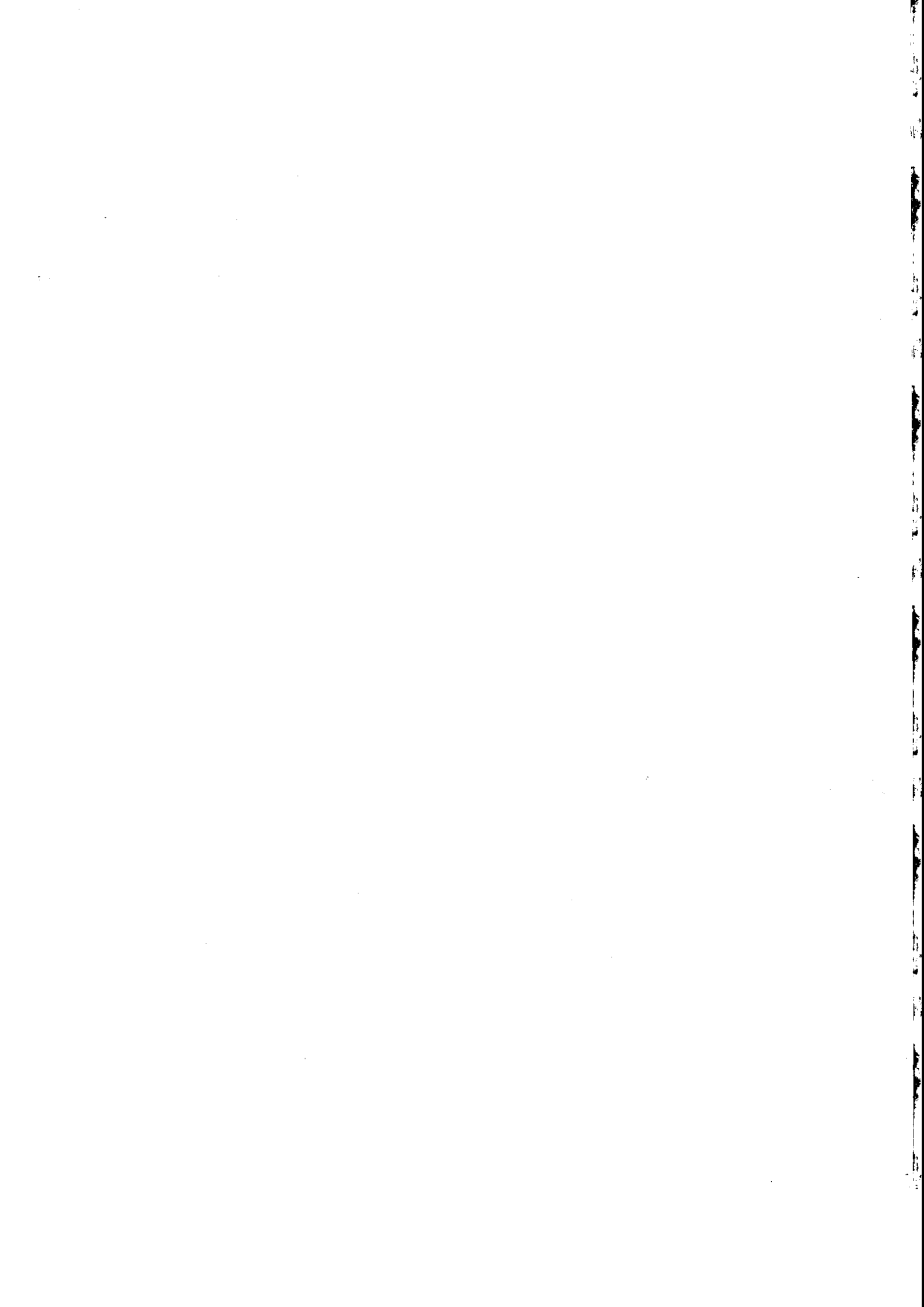
Other proposals. 56/

138. There were other proposals relating to freedom of information, which were not adopted. One proposal was that "nothing in this article shall prevent a State from establishing on reasonable terms a right of reply or a similar corrective remedy". Another proposal was that "nothing in this article shall be deemed to affect the right of any State to control the entry of persons into its territory or the period of residence therein". It was generally thought that such provisions might be included in special conventions in the field of freedom of information. 57/

55/ The question of balance of payment and the question of restrictive or monopolistic practices in restraint of the free flow of information were dealt with respectively in Article 4 of the draft convention on freedom of information as prepared by the United Nations Conference (E/Conf.6/79), and in articles 6 and 7 of the draft convention on freedom of information as prepared by the General Assembly Committee (A/AC.42/7).

56/ E/CN.4/SR.165; E/CN.4/80; E/Conf.6/79, Annex B.

57/ The right of reply was the subject of the Convention on the International Right of Correction adopted by the General Assembly in resolution 630 (VII) and was also dealt with in paragraph 2 of article 2 of the draft convention on freedom of information prepared by the United Nations Conference (E/Conf.6/79) and in article 4 of the draft convention on freedom of information prepared by the General Assembly Committee (A/AC.42/7). The question of the entry of any person into a territory and of his residence therein was dealt with in article 6 of the draft convention on freedom of information, as prepared by the United Nations Conference (E/Conf.6/79) and in article 9 of the draft convention on freedom of information as prepared by the General Assembly Committee (A/AC.42/7).



DOCUMENTATION

<u>Organ and session</u>	<u>Records of discussion</u>	<u>Other documents</u>	<u>Article Number</u>
CHR, DC (1)	E/CN.4/AC.1/SR.10	E/CN.4/21, annex G, art.9	
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