



UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
GENERAL

E/CN.4/Sub.2/SR.261  
28 April 1959

ORIGINAL: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION  
AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND SIXTY-FIRST MEETING

Held at Headquarters, New York,  
on Friday, 9 January 1959, at 10.50 a.m.

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practices (E/CN.4/Sub.2/L.123/Add.1) (continued)

PRESENT:

<u>Chairman:</u>	Mr. AWAD	(United Arab Republic)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. BEYHUM	(Lebanon)
	Mr. CHAYET	(France)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. INGLES	(Philippines)
	Mr. KRISHNASWAMI	(India)
	Mr. MACHOWSKI	(Poland)
	Mr. SANTA CRUZ	(Chile)
	Mr. SPAULDING	(United States of America)

Also present:

Miss MAÑAS	Commission on the Status of Women
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Representatives of specialized agencies:

Mr. PAYRO	International Labour Organisation
Mr. SALSAMENDI	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category B and Register:</u>	Father GAGNON	International Catholic Child Bureau
	Mr. KIRCHNER	Pax Romana
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub- Commission

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STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES  
(E/CN.4/Sub.2/L.123/Add.1) (continued)

Specific issues (paragraphs 251 to 261)

The CHAIRMAN, speaking as a member of the Sub-Commission, said that there was only one aspect of religion - practices which conditioned the way of life - which provided any occasion for conflict between the State and religious groups, but there the conflict might be serious. As the Special Rapporteur had pointed out, some religious practices could be contrary to morality, public order, or the general welfare. That was not so for the great religions such as Christianity, Buddhism or Mohammedanism, but as an international body, the United Nations must consider all faiths, including those which countenanced such practices as human sacrifice and slavery. Such practices were harmful both to individuals and to the community, and the question of limiting them must therefore be faced.

Father GAGNON (International Catholic Child Bureau) paid a tribute to the Special Rapporteur for the objectivity and fairness of his report (E/CN.4/Sub.2/L.123/Add.1) and for the attention he had paid to the comments of non-governmental organizations. At the previous sessions, his organization had expressed the hope that the importance of religion in the eyes of believers would be explicitly mentioned in the report. As it had then stated, hundreds of millions believed in God, the creator and master of the universe, from whom all human rights flowed. States must in no way interfere with the internal organization of religious groups and should co-operate with them in dealing with matters which were both civil and religious, particularly when they had social implications. His organization now wished to re-emphasize that point and ask the Rapporteur to state clearly in his report that, for believers, religion was not merely a matter of personal opinion but the recognition of a transcendental truth, which conditioned all human actions because it implied an over-all conception of man and the world. The prevention of discrimination in the matter of religious rights and practices involved respect for that conception.

Mr. HISCOCKS noted that paragraph 259 was only tentative and welcomed the Special Rapporteur's decision to give the matter a closer study after the collection of more information and its verification by Governments.

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Mr. SAARIO said that everyone's duties to the community were recognized in article 29, paragraph 1 of the Universal Declaration of Human Rights. The idea of peaceful co-existence was based on a similar recognition of a State's duties to the international community. What was to be aimed at in the field of religious rights and practices was the peaceful co-existence of all religious groups.

Referring to paragraph 254, he agreed that there were some ancient religious practices which conflicted with the standards of modern society. While the individual should be given as much freedom of belief and worship as possible, he must not be allowed to forget that he owed a duty to the community also. Religious groups which maintained such practices should not be asked to abandon their dogma or their form of worship, but they should be asked to avoid public manifestations of it which might be prejudicial to the maintenance of public order. He strongly endorsed the Special Rapporteur's view that the limitation of such practices could not be interpreted as discrimination.

Mr. INGLES felt that the formulation of paragraph 254 called for improvement. Since the word "obviously" was used in the first sentence, the Special Rapporteur must have thought the idea of what constitutes "morality, public order and the general welfare in a democratic society" to be perfectly clear; but in paragraph 249, he stated that the same idea in article 29, paragraph 2 of the Universal Declaration lacked precision.

Mr. KIRCHNER (Pax Romana) said that the comments he wished to make were not intended to reflect on the efficiency and objectivity of the Special Rapporteur and the staff working with him. However, the supporting material, as reflected in the conference room papers, appeared likely to impair the effectiveness of their efforts. In some instances, the papers clearly reflected a definite orientation on the part of Governments. In certain cases, the presentation of facts either was not in accordance with the country's actual practice or was tendentious and misleading. Some organizations were referred to as bona fide religious groups, for instance, when they more nearly resembled Government-manipulated bodies.

As his organization had stated at the previous session, the invasion of the domain of religion by the State for the purpose of destroying religion had received little public notice, although in some areas it was an evil of the first magnitude, against which protesting believers were comparatively helpless.

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(Mr. Kirchner, Pax Romana)

The gap between de jure and de facto situations in certain countries tended to undermine confidence in the interpretation given by Governments to their own legal texts. That was particularly true in areas where there were few independent observers and little freedom of speech, of the press or of voluntary association and those discriminated against had little or no possibility of recourse either to their own Governments or to international bodies.

In view of the mounting evidence of religious discrimination and persecution in different parts of the world, the constitutional guarantees of religious freedom given by certain Governments did not carry much conviction. A Government decree proclaiming freedom of religion did not necessarily ensure that freedom in practice. Competent non-governmental organizations should be given the opportunity to supply a documented commentary on the Government presentations made in the conference room papers or other documents.

The CHAIRMAN, speaking as a member of the Sub-Commission, remarked that the Special Rapporteur had been at pains to make it clear, in paragraph 254 and elsewhere, that the limitation of practices which were prejudicial to the public good could not be considered as discrimination. However, he should point out that States were not entitled to take arbitrary action, such as the closing of all churches, which affected all religious groups.

The practices referred to in paragraph 255, were rapidly disappearing in any case. No religious group could, of course, be allowed to indulge in practices harmful to the community as a whole, but the State must not go too far in imposing limitations on religious groups in other directions; a balance should be struck between the interests of the community and those of the religious group. The point had been very clearly made by the Special Rapporteur.

Mr. KRISHNASWAMI, Special Rapporteur, said that what he had had in mind in drafting paragraph 255 had been that such practices must be prohibited in the interest not only of the community but also of the individuals concerned.

He agreed with Mr. Ingles that the word "obviously", in the first sentence of paragraph 254, was inappropriate. Although article 29, paragraph 2 of the Universal Declaration of Human Rights was lacking in precision, it had merits; that was why he had quoted it.

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Imposition of limitations upon particular practices prescribed by religion or belief (paragraphs 262 to 315)

Miss MAÑAS (Commission on the Status of Women) said that her Commission had been concerned for some time with the question of marriage and divorce. On the basis of the Commission's reports, the Economic and Social Council had adopted resolution 652 G (XXIV), recommending a system whereby the prospective spouses in a marriage themselves must express their consent freely and whereby there should be compulsory registration of marriage and divorce, and resolution 680 B (XXVI), concerning the age of marriage, free consent and registration of marriages. As the Commission had stated, there was no contradiction between respect for religious forms of marriage and the registration of marriages. However, there were still some ancient religions which enabled the head of the family or a woman's guardian to give her in marriage without her consent. Similarly, a woman could be repudiated by her husband without being given the opportunity to protest. In both cases, the woman was deprived of her fundamental rights.

The Commission on the Status of Women felt that it was essential to have the free consent of both parties to marriage and that religious practices which allowed marriage without such consent were discriminatory, particularly in respect of women.

The Commission did not wish to suggest any modification of basic rule 5 (E/CN.4/Sub.2/L.123/Add.1, page 44) proposed by the Special Rapporteur, but it would like its views to be recorded in the report of the Sub-Commission's present session.

Mr. HISCOCKS suggested, and Mr. KRISHNASWAMI, Special Rapporteur, agreed that the last clause of paragraph 274 should, for purposes of clarification, be reworded to read: "... but only a practice which, from a religious point of view, is permissible".

The CHAIRMAN, speaking as a member of the Sub-Commission, observed, in connexion with paragraphs 273 to 276 (Policy and procedures for the dissolution of marriage by divorce), that the recognition of divorce was related in some religions to the perpetuation of the race and that the religious authorities considered it to be a sacred trust to see that children grew up in an atmosphere of family harmony. The very fact that there had been no strong protest against

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(The Chairman)

that position indicated that it represented a basic religious tenet. The recalcitrant individual's only recourse would appear to be to change his religion, but such a change would be one of convenience and would actually be an abuse of the freedom to change religion.

Mr. INGLES considered the section under discussion to be an improvement over the corresponding section of the draft report (E/CN.4/Sub.2/L.123), but hoped that the omission of any reference to polygamy - which had been dealt with at some length in the original draft - had not been deliberate and that that point would be covered in the Special Rapporteur's final draft.

Mr. KRISHNASWAMI, Special Rapporteur, assured Mr. Ingles that polygamy would be dealt with in the final study and noted in passing that polygamy was nowhere mandatory; it was merely permitted in certain countries.

Mr. INGLES, referring to paragraph 288, pointed out that in his draft report (E/CN.4/Sub.2/L.123, paragraph 120), the Special Rapporteur had taken the view that the designation by the public authorities of the holidays of the predominant religious group as official holidays was not discriminatory so long as the needs of minorities were taken into account "as far as practicable". That formulation was preferable to the one in the supplement. The limitation imposed by the public authorities was in the category of limitations of particular manifestations of religion or belief which might or might not be discriminatory, depending upon the circumstances. Indeed, public recognition of the holidays of the predominant religious group with no account being taken of the claims of minorities, might even be justified on grounds of public convenience and hence not considered discriminatory.

Mr. FOMIN said that the formulation of paragraph 288 gave the impression that the Special Rapporteur considered the dominant religious group to be a privileged group whose holidays should be observed as official holidays as a matter of right. Only in a country where the minority religions represented a small portion of the population would such a policy, with reservations, be considered non-discriminatory. In multi-religious societies where the dominant religious group was simply in the majority, it was admittedly more difficult to lay down any rule. Nevertheless, the Special Rapporteur should attempt to correct the impression given by the paragraph as it stood.

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Mr. KRISHNASWAMI, Special Rapporteur, agreed with Mr. Ingles that it would be advisable to restore the qualifying phrase "as far as practicable" in connexion with respect for the claims of minorities regarding the observance of religious holidays. Furthermore, in order to meet Mr. Fomin's objection, he would reword the first sentence of paragraph 288 to read: "One of the most common instances of a public authority giving effect to the practices of the religion or belief of the majority of the population is the designation of the holidays of that religion as official days of rest." There were so many mitigating circumstances in multi-religious societies that no basic rule could be agreed upon. Even the qualifying phrase "as far as practicable", applied to respect for the claims of minorities, introduced some ambiguity.

The CHAIRMAN, speaking as a member of the Sub-Commission, observed in connexion with paragraphs 306 to 315 (Dissemination of religion or belief) that conversion to a religious faith or change of religion was more often than not imposed by outside pressures and was not an expression of personal conviction. In some backward countries, inducements such as money, free education and the like were offered to effect a change in the religious adherence of the population. In areas such as Africa, foreign missionaries were frequently accused of political motives in the propagation of religion.

Mr. FOMIN, commenting on paragraph 307, pointed out that certain methods used to propagate religion, while they might not be offensive per se, might be detrimental to health. In one country, there had been an instance where the members of a religious group had been subjected to immersion in icy waters, presumably with a view to curing them of diseases. Such charlatanism, practiced in the name of religion, should clearly be prohibited.

The expression "laws against blasphemy", as used in that paragraph, implied, as he understood it, protection of those who believed in a deity. However, it was necessary, particularly where the majority were believers, to afford equal protection to non-believers. The Special Rapporteur should guard against appearing to uphold religion against rationalism, agnosticism, free thought or atheism. He therefore hoped that the Special Rapporteur would find a more suitable term.

Mr. HISCOCKS did not share Mr. Fomin's concern regarding the reference to laws against blasphemy. In his country, at least, such laws were not invoked

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(Mr. Hiscocks)

against sincere expressions of atheistic views. He admitted, however, that in many countries the laws against blasphemy were antiquated, and he saw no objection to the addition of a further sentence on the subject in paragraph 307.

The term "undue influence" used in paragraph 241 could usefully be clarified by adding a footnote to that paragraph, referring to paragraphs 311 and 312. The Special Rapporteur did not appear to feel that educational and humanitarian activities should be considered as undue influence; but illustrative examples of what constituted such influence might usefully be added between the first and second sentences of paragraph 312.

Mr. MACHOWSKI said it was an unfortunate fact that campaigns were frequently conducted in the name of religion which had little to do with faith or belief, but were motivated by political considerations. He was not altogether satisfied with paragraph 314 and felt that the report should express a clear prohibition of the misuse of religion for political aims. In colonial days, missionaries frequently represented not only the religion of the majority in their own country but also the political interests of the colonial authorities.

Mr. KRISHNASWAMI, Special Rapporteur, stressed the delicacy of the problems involved in the dissemination of religion or belief and the difficulty of drafting a satisfactory text. He had not intended to give a wide meaning to the term "blasphemy"; nevertheless, he agreed that a more balanced statement was required and that the point could be further clarified. It was, however, impossible to go into every aspect in a section dealing with specific issues. He believed that the point raised by Mr. Fomin concerning methods of propagating religion had already been covered under the heading "Imposition of limitations on particular practices prescribed by religion or belief". He agreed to Mr. Hiscocks' suggestion to add a footnote to paragraph 241, but hesitated to include an illustrative example of undue influence in paragraph 312. Like

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(Mr. Krishnaswami, Special Rapporteur)

self-defence, undue influence had been defined only up to a certain point. It was undesirable to seek too great precision in the matter, which might be considered basic by some. Furthermore, it was not wise to multiply examples in a section dealing with specific issues. He thought that the point raised by Mr. Machowski was adequately covered by paragraph 314. His own view had been that it was necessary first to express the substantial right of religious groups to disseminate their religion or belief and then to refer to possible limitations of that right. Perhaps he had erred in placing too much emphasis on the right itself.

Mr. HISCOCKS said that he had not wished the Special Rapporteur to define precisely the meaning of undue influence. An illustration would be given by the cross-reference he had suggested, but the addition of at least one non-controversial example after the first sentence of paragraph 312 was desirable.

The meeting rose at 12.45 p.m.