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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND SIXTY-SECOND MEETING

Held at Headquarters, New York,
on Friday, 9 January 1959, at 3.20 p.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)

Representatives of specialized agencies:

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

Representatives of non-governmental organizations:

Category B and Register:

	Mr. ATWATER	Friends World Committee for Consultation
	Mrs. BAKER	Women's International League for Peace and Freedom
<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)

Imposition of duties contrary to religion or belief

- (a) Conscientious objection to military service on grounds of religion or belief
(paragraphs 316 to 320)
- (b) Objection to the taking of an oath on grounds of religion or belief
(paragraphs 321 to 323)

Mr. ATWATER (Friends World Committee for Consultation) remarked that conscientious objection was of the greatest interest to his organization. He thanked Mr. Krishnaswami for having dealt with that question in his draft report, particularly in paragraph 320 and in rule 11.

Even in countries which recognized conscientious objection, it often happened that the benefits of special regulations in that respect were extended only to the members of a limited number of religious groups. That was a view to which the Quakers strongly objected. The criterion ought not to be membership in a group but only sincerity of conviction, whether that conviction had a religious basis or not.

He wished to offer the Sub-Commission two suggestions concerning the text of the draft report. First, he hoped that Mr. Krishnaswami would develop in paragraph 318 the idea of "alternative service" contained in embryo in the original report. Sincere conscientious objectors refused to bear arms but not to expose themselves to danger or to sacrifice themselves. Some countries already offered them an opportunity to render useful service to society in hospitals and medical institutions, for example. By clearly bringing out that idea of "alternative service", the Special Rapporteur would call the attention of certain States to a practical means of solving the difficulties created by the presence of conscientious objectors.

Secondly, he would be grateful if, both in the body of the draft report and in rule 11, Mr. Krishnaswami could stress the need to protect conscientious objectors from discrimination in such matters as employment, vocational training and social security. It happened, in fact, that persons imprisoned as conscientious objectors were prevented from engaging in their chosen profession after their release from prison, or that individuals who for conscientious reasons refused to take an oath were denied access to certain positions of public employment, such as teaching, although their very scruples were a proof of their loyalty,

(Mr. Atwater, Friends World Committee
for Consultation)

The statement that an exemption granted to conscientious objectors might be considered "a privilege entailing discriminatory treatment of others" (paragraph 319) was inconsistent with the very idea of the protection of minorities and he hoped that the Special Rapporteur would reword that part of his text.

In conclusion, quoting from a communication from the Central Board for Conscientious Objectors in Great Britain, he observed that the failure to recognize conscientious objection led to persecution and he appealed to the Sub-Commission to help to protect persons who, in their own way, were serving the cause of humanity and their respective countries in a divided world.

Mr. SAARIO recalled that article 8 of the draft Covenant on Civil and Political Rights left the question of conscientious objection to the discretion of States. It would be for the Sub-Commission to decide whether it should observe the same caution or whether, on the contrary, it ought not to try to define the general principles that should be followed in the matter.

Mr. HISCOCKS said that he felt sympathy with the Quakers point of view and thought that the Special Rapporteur might make a few changes in paragraph 320 in order to introduce the idea of alternative service. He might also add the following sentence at the end of paragraph 319: "This latter attitude sometimes leads to unjustified discrimination against conscientious objectors seeking employment". It would, however, be undesirable to amend the basic rules by loading them down with details which would prevent them from being forceful and concise.

Mr. CHAYET shared the views expressed by the Special Rapporteur in paragraph 320, stressing respect for the opinions of others. Nevertheless, the most important problem in that connexion was how to judge the sincerity of conscientious objectors.

Mr. SPAULDING thought that the basic criterion was the sincerity of the individual and that it was not, therefore, possible to study the treatment of conscientious objection in the same way as other forms of discrimination.

Mr. KRISHNASWAMI, Special Rapporteur, said he had listened with the greatest interest to the various statements, particularly that of Mr. Atwater.

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(Mr. Krishnaswami, Special Rapporteur)

He had gone as far as he could to give due consideration to the ideas expressed by the representatives of the Friends World Committee for Consultation and the Women's International League for Peace and Freedom. Nevertheless, it was not the Sub-Commission's task to examine the various possible forms of alternative service. It must establish a fundamental principle, namely, that a group should not be penalized for its convictions, and it must study rules that would be applicable throughout the world; but it could not go into details.

Moreover, he did not think that Mr. Atwater's criticism of paragraph 319 was justified. He had described a situation for the sole purpose of explaining certain reactions and placing the question of conscientious objection in its proper context. It should not be forgotten that many States did not recognize conscientious objection. In addition, although article 7 of the Universal Declaration of Human Rights proclaimed that all were entitled without any discrimination to equal protection of the law, article 29 spoke of the duties of the individual to the community without further explanation. Thus, in spite of his sympathy for conscientious objectors, he had been unable to do more than call the attention of States to the problems raised by conscientious objection, without presuming to decide between the supporters and opponents of that doctrine.

Mr. HISCOCKS said he did not find the Special Rapporteur's argument entirely convincing. It was not enough to describe or explain the population's reactions. It was also necessary to indicate that those reactions were very often unfair, for many conscientious objectors were ready to risk their lives for their ideas. There was certainly no need to make a detailed study of alternative service, but it was of interest as offering a practical solution to the problem of conscientious objection.

Mrs. BAKER (Women's International League for Peace and Freedom) suggested that rule 11 should make a brief reference to the possibility of alternative service.

Mr. ATWATER (Friends World Committee for Consultation) said he had not meant to ask Mr. Krishnaswami to include in his report a detailed consideration of alternative service, but he stressed again the practical value of such service, and thought it should be mentioned in a few words in paragraph 318, for that would encourage the authorities in certain countries.

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(c) Objection to compulsory participation in religious and civic ceremonies (paragraphs 324 to 326)

There was no comment.

(d) Objection to compulsory prevention or treatment of disease (paragraphs 327 and 328)

Mr. HISCOCKS, referring to recent occurrences in Canada, observed that even in medically advanced countries parents could not always be prevented from refusing to allow their children to receive essential medical care. He suggested that in the last sentence of paragraph 328 the words "is similarly resolved" by the words "should be similarly resolved".

Mr. KRISHNASWAMI, Special Rapporteur, accepted that amendment.

Proposals for action (paragraphs 329 to 351)

Mr. KRISHNASWAMI, Special Rapporteur, opening the discussion on that chapter, observed that the wording of the draft report was provisional and would undoubtedly be revised.

When considering the proposals for action, which were the most important part of the study of discrimination in the matter of religious rights, he had wished first and foremost to stress the work of the United Nations and its various bodies dealing with human rights. At its 1948 session the General Assembly had proclaimed the Universal Declaration of Human Rights and had adopted the Convention on the Prevention and Punishment of the Crime of Genocide, which had been ratified or acceded to by fifty-eight States. At conferences held in 1951 and 1954 Conventions relating to the Status of Refugees and the Status of Stateless Persons had been concluded. Furthermore, the General Assembly now had before it the draft Covenant on Civil and Political Rights.

He was aware that his study was still incomplete. He had had two reasons for drafting the basic rules at the present stage. First, the Third Committee would, in 1959, be required to consider the question of freedom of religion during its discussion of the draft Covenant on Civil and Political Rights; it ought, therefore, to be informed of the Sub-Commission's views. Secondly, the present document was a supplement to the draft report submitted to the Sub-Commission at its previous

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(Mr. Krishnaswami, Special Rapporteur)

session (E/CN.4/Sub.2/L.123), which had not contained the chapter under discussion; he required to know the views of the Sub-Commission's members in order to be able to complete the drafting of the report he would submit at the next session.

Mr. FOMIN wondered whether the Sub-Commission should follow the procedure it had adopted for the main report, leaving to the Special Rapporteur the responsibility for the final formulation of the rules, or whether it should make a distinction between the rules and the rest of the report. He personally did not think that necessary, but he would like that point to be decided.

Mr. HISCOCKS, supported by the CHAIRMAN, suggested that the Sub-Commission should hold a general discussion on the basic rules before examining them one by one, so as to give the Special Rapporteur the opportunity of explaining his views on them.

Mr. KRISHNASWAMI, Special Rapporteur, said in reply to Mr. Fomin, that unless the basic rules were approved by the Sub-Commission they would not be transmitted to the Commission on Human Rights; if the Sub-Commission approved them it would then have to decide whether it should take further measures.

Mr. FOMIN explained that he had not meant to raise the question of the substance of the basic rules. If the same rules were placed before the Sub-Commission at its next session there was no doubt that the Sub-Commission would base its decisions on them. But the rules could not be forwarded to the Commission on Human Rights without the report while the latter remained unfinished. The Third Committee would no doubt be glad to know the views and conclusions of the Sub-Commission on the matter of religious rights, but it was not possible for the Sub-Commission to complete its consideration of Mr. Krishnaswami's report and the draft rules, and it obviously could not submit incomplete material to higher organs for consideration.

Mr. HISCOCKS agreed with Mr. Fomin and Mr. Krishnaswami. It was not necessary to give the enunciation of basic rules final approval at the present session. But if the Sub-Commission were to give the rules its general approval it would seem quite in order for it so to inform the Commission on Human Rights.

He wondered whether the Special Rapporteur could say what had been his aim in formulating the basic rules: had he intended them as practical rules for the guidance of Governments, or as principles for moral conduct? For his part, he felt that they represented an extension of the draft Covenant on Civil and Political Rights.

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(Mr. Hiscocks)

He also wished to know what meaning to attribute to the first sentence in paragraph 337 and whether the sentence applied to the present time or to the moment when the rules had been approved by the Sub-Commission.

Mr. CHAYET shared Mr. Hiscocks' views. The basic rules were the most important part of the report, although they were only a first step towards the conclusions which the Sub-Commission must reach. He believed that the Special Rapporteur's intention had been to give his colleagues matter for thought, but that once their observations had been made, the basic rules would remain at the draft stage. Chapter XI would in fact be no more than a working document until the completion of the Study in 1960.

The CHAIRMAN, speaking as a member of the Sub-Commission, regarded the basic rules as an annex to the draft report which would be useful for the Special Rapporteur to examine as so far he had only had a small number of country studies to consider; at the same time, he would have an opportunity to improve the wording of the basic rules.

With regard to the procedure to be followed, it seemed reasonable to study each rule separately.

Mr. INGLES pointed out that the first paragraph of rule 1 contained the words "any adverse distinctions against ..."; he recalled that at its previous session the Sub-Commission had studied the proposed Convention concerning Discrimination in the field of Employment and Occupation, article 1 of which had contained a similar expression ("any adverse distinction ... which deprives a person of ..."); on that occasion the Sub-Commission had suggested to the ILO that the expression should be made more precise, and the ILO had finally adopted the words "any distinction, exclusion or preference". Without wishing to impose that formula on the Sub-Commission he believed that the Special Rapporteur could propose a more precise formulation.

He was afraid that Mr. Krishnaswami had failed to mention one of the duties of public authorities. Their role was not only to prevent discrimination but also to protect victims of discrimination. He would therefore like the Sub-Commission, following the example of the Commission on Human Rights when it formulated article 2, paragraph 3 (a) of the Draft Covenant on Civil and Political Rights, to

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(Mr. Ingles)

include in rule 1 a clause establishing "the obligation for public authorities to ensure an effective remedy to aggrieved persons". Perhaps the Special Rapporteur could also refer to judicial remedies in rule 1 (1).

He reserved the right to revert to rule 1 (2) at a later stage.

Mr. HISCOCKS said that he had been particularly struck by the conciseness and the universality of the basic rules proposed by the Special Rapporteur. In a desire, however, to bring them more closely into line with other United Nations documents and to make them as simple and persuasive as possible, he wished to propose an amendment with regard to the presentation of the various permissible limitations since he feared that the presentation, as it stood, was insufficiently clear and that by a process of reiteration too much importance had been attached to the limitations in question. Thus rule 3 was a variant of article 18 (3) of the draft Covenant on Civil and Political Rights, but there did not seem to be any justification for such a variant; other references to limitations were to be found in rules 4, 8, 9 and 10; in rule 2 (1) the expression "is absolute" might be more appropriate than "does not admit of any limitation"; lastly the expression "as far as practicable" used in rule 6 left a loophole. He was in favour of combining the various limitations in a single rule numbered 13 which would read as follows:

"1. Freedom to manifest one's religion or belief may be subject only to the limitations enumerated in article 18 (3) of the draft Covenant on Civil and Political Rights. Any limitations upon that freedom should be exceptional and should be confined within the narrowest possible bounds. Moreover the mere fact of maintaining a belief should never be a ground for applying any of the limitations."

Mr. KRISHNASWAMI, Special Rapporteur, said that he had alluded to the limitations in different paragraphs in order to distinguish between usual limitations, narrower than usual limitations and broader than usual limitations. In reply to Mr. Hiscocks, he believed that to say in rule 2 that a right did not admit of any limitation was equivalent to saying that it was absolute. If the text of certain of the basic rules did not coincide with the draft Covenant on Civil and Political Rights, that was due to various reasons which he would like to explain

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(Mr. Krishnaswami, Special Rapporteur)

at a later stage. The use of the expression "as far as practicable" in rule 6 was justified by certain practices which were contrary to the most elementary rules of hygiene, such as some practices of the Parsees. He was prepared to modify the text of the rules provided that they were not made as rigid as commandments.

He proposed that in order to take Mr. Ingles' objections into account the phrase "preventive as well as remedial" should be added after the words "administrative measures". He too was in favour of a simple wording provided that the essential notions of the individual, religion and the State were not lost sight of. He proposed that the Sub-Commission should continue the general debate regarding the method of presentation of the basic rules before examining each rule in detail.

The CHAIRMAN, speaking as a member of the Sub-Commission, asked the Special Rapporteur to state exactly what he meant by usual, narrower than usual and broader than usual limitations.

Mr. HISCOCKS could not agree with such a distinction as it was both dangerous and contrary to the provisions of article 18 (3) of the draft Covenant on Civil and Political Rights and that was why he had proposed a thirteenth rule dealing with the question of limitations.

Mr. SPAULDING believed that each of the basic rules would be strengthened if Mr. Hiscocks' proposal was adopted.

The CHAIRMAN, supported by Mr. MACHOWSKI, proposed the adjournment of the discussion on limitations and the detailed consideration of the basic rules until the following meeting. Speaking as a member of the Sub-Commission, he said that he was in favour of Mr. Hiscocks' proposal.

The motion for the adjournment was adopted.

The meeting rose at 5.15 p.m.